

# ARBOR TRACE CONDOMINIUM ASSOCIATION, INC.

A NOT-FOR-PROFIT CORPORATION

1000 Arbor Lake Drive • Naples, FL 34110 • (239) 598-2929

## FREQUENTLY ASKED QUESTIONS AND ANSWERS

January 1, 2018

*Q: What are my voting rights in the condominium association?*

**A: The owner of each unit is entitled to one vote pursuant to Section 6 of the Declaration of Condominium.**

*Q: What restrictions exist in the condominium documents on my right to use my residence?*

**A: Each of the Units shall be occupied only by a single family, its servants and guests, as a residence and for no other purpose. No Unit may be divided or subdivided into a smaller Unit, nor any portion thereof sold or otherwise transferred. In accordance with the Fair Housing Amendments Act of 1988 as amended by the Housing for Older Persons Act of 1995, and as provided in parallel state or local ordinances, all as amended from time to time, only persons fifty-five (55) years of age or older may be the permanent occupant of any Unit. The Board of Directors shall have the authority to establish additional regulations, if necessary, to define "primary occupant", pursuant to Section 1.31 of the Declaration of Condominium as amended and restated on April 20, 2011.**

*Q: What restrictions exist in the condominium documents on the leasing of my unit?*

**A: No lease shall be for a period of less than ninety (90) consecutive days. The Transfer of Condominium Units by lease as well as by sale, gift, devise or inheritance is subject to approval by the Association following receipt of notice of intention by the Unit owner as stipulated in Section 15.3 of the Declaration of Condominium.**

*Q: How much are my assessments to the condominium association for my residence and when are they due?*

**A: Monthly assessments are due on the first day of the month in advance. The monthly assessments by Unit type are as follows: Type A Unit: \$564; Type B Unit: \$708; Type C Unit: \$941; Type D Unit: \$868; Type E Unit: \$1,225; Type F Unit: \$1,127; Type G Unit: \$1,284.**

*Q: Do I have to be a member in any other association? If so, what is the name of the association and what are my voting rights in this association? Also, how much are my assessments?*

**A: No, membership is not required in any other association.**

*Q: Am I required to pay rent or land use fees for recreational or other commonly used facilities? If so, how much am I obligated to pay annually?*

**A: Arbor Trace Service Center (The Club) is operated by Arbor Pointe Management, LLC and is NOT part of the Arbor Trace Condominium. Upon the purchase of a condominium unit, residents are obligated to enter into a contract for services provided by Arbor Pointe Management, LLC. Service Fees are paid monthly and include the base service fee, reserve fee and minimum annual meal contract fee (prorated over twelve months).**

*Q: Is the Condominium Association involved in any court cases in which it could incur liability in excess of \$100,000? If so, identify each such case.*

**A: No, the Arbor Trace Condominium Association has no legal liabilities, neither currently or in the foreseeable future, in excess of \$100,000.**

**NOTE: THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, EXHIBITS HERETO, THE SALES CONTRACT, AND THE CONDOMINIUM DOCUMENTS.**

Acknowledged By: \_\_\_\_\_ Unit #: \_\_\_\_\_ Date: \_\_\_\_\_

Prepared by and returned to:

Becker & Poliakoff, P.A.  
James Robert Cave, III, Esquire  
999 Vanderbilt Beach Road  
Suite 501  
Naples, FL 34108

## **CERTIFICATE OF RECORDATION**

### **AMENDED AND RESTATED DECLARATION OF CONDOMINIUM ARBOR TRACE, A CONDOMINIUM**

### **SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION SECOND AMENDED AND RESTATED BYLAWS**

### **ARBOR TRACE CONDOMINIUM ASSOCIATION, INC.**

I HEREBY CERTIFY that the attached Amended and Restated Condominium Documents were duly adopted by the Association membership at the duly noticed special members' meeting of the Association on the 20<sup>th</sup> day of April 2011. The original Declaration of Condominium for Arbor Trace, A Condominium is recorded at O.R. Book 1634, at Page 1634 *et seq.*, of the Public Records of Collier County, Florida, and re-recorded at O.R. Book 1643, Page 1444 *et seq.*, of the Public Records of Collier County, Florida.

The Amended and Restated Declaration of Condominium of Arbor Trace, A Condominium is attached hereto. All previous site plans of record are incorporated by reference, with photocopies recorded for reference as Exhibit "A". The Second Amended and Restated Articles of Incorporation of Arbor Trace Condominium Association, Inc. are attached as Exhibit "B". The Second Amended and Restated Bylaws of Arbor Trace Condominium Association, Inc. are attached as Exhibit "C".

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WITNESSES:  
(TWO)

ARBOR TRACE CONDOMINIUM  
ASSOCIATION, INC.

Sandra Steinbach  
Signature  
Sandra Steinbach  
Printed Name

BY: Donald E. Boulbee  
Donald Boulbee, President

Date: 6/17/11

Judy Along  
Signature  
Judy Along  
Printed Name

(CORPORATE SEAL)

ATTEST: Prudence S. Hultzen  
Prudence Hultzen, Secretary

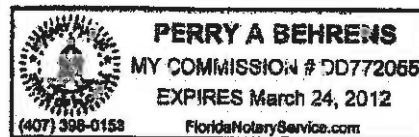
STATE OF Florida )  
COUNTY OF Collier ) SS:

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of June, 2011, by Donald Boulbee as President of Arbor Trace Condominium Association, Inc., a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced (type of identification) \_\_\_\_\_ as identification.

Perry A. Behrens  
Notary Public  
Perry A Behrens  
Printed Name

My commission expires: 3/24/12

ACTIVE: 3400512\_1



**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**ARBOR TRACE, A CONDOMINIUM**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 1634, Pages 1634, *et seq.* of the Collier County Public Records on July 25, 1991, the Condominium Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Collier County, Florida, more particularly described as follows:

THE EAST 1383.46 FEET OF THE SOUTH ½ OF THE SOUTH ½ OF THE NORTHEAST ¼ OF SECTION 8, TOWNSHIP 48 SOUTH, RANGE 25 EAST, COLLIER COUNTY, FLORIDA, LESS AND EXCEPT ANY PORTION OF THE FOLLOWING DESCRIBED OUT-PARCEL LYING WITHIN THE EAST 1383.46 FEET OF SAID PROPERTY:

BEGINNING AT A POINT ON THE SOUTH PROPERTY LINE 1383.46 FEET FROM THE SOUTHEAST CORNER OF THE PROPERTY AND THENCE N 00°45'30" W 31.42 FEET; THENCE N 89°10'44" E 45.60 FEET; THENCE N 37°28'12" E 357.47 FEET; THENCE N 02°04'46" W 203.93 FEET; THENCE S 89°25'54" W 67.98 FEET; THENCE S 55°00'03" W 68.02 FEET; THENCE N 33°50'07" W 93.21 FEET; THENCE SOUTHWESTERLY 30.51 FEET ALONG THE ARC A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 275' AND BEING SUBTENDED BY A CHORD WHICH BEARS S 49°27'43" W, 06°21'25"; THENCE S 46°16'57" W 162.35 FEET; THENCE S 01°23'01" E 122.12 FEET; THENCE S 88°36'56" W 117.91 FEET; THENCE S 01°23'01" E 184.66 FEET; THENCE S 88°36'59" W 114.43 FEET; THENCE S 42°12'43" E 13.85 FEET; THENCE S 36°56'13" E 35.00 FEET; THENCE S 13°10'54" E 28.55 FEET; THENCE S 21°28'22" W 28.39 FEET; THENCE S 09°44'28" E 28.02 FEET; THENCE N 88°24'30" E 254.64 FEET TO THE POINT OF BEGINNING.

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 1643, Page 1444, *et seq.*, Collier County Public Records;

Amendment recorded at O.R. Book 1704, Page 666, *et seq.*, Collier County Public Records;

Amendment recorded at O.R. Book 2149, Page 687, *et seq.*, Collier County Public Records;

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Amendment recorded at O.R. Book 2280, Page 1623, *et seq.*, Collier County Public Records;

Amendment recorded at O.R. Book 3073, Page 3228, *et seq.*, Collier County Public Records;

Amendment recorded at O.R. Book 3095, Page 32, *et seq.*, Collier County Public Records;

Amendment recorded at O.R. Book 3198, Page 315, *et seq.*, Collier County Public Records;

Amendment recorded at O.R. Book 4258, Page 2165, *et seq.*, Collier County Public Records; and

Amendment recorded at O.R. Book 4323, Page 237, *et seq.*, Collier County Public Records.

The submission of the land to the condominium form of ownership by that document is and will remain effective. By adoption of this Amended and Restated Declaration of Condominium, the Association Members hereby adopt certain amendments to the Declaration of Condominium and hereby restate the Declaration of Condominium and its Exhibits in its entirety. By adoption of this Amended and Restated Declaration of Condominium, the Members of the Association ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of the Condominium Act.

1. **DEFINITIONS.** As used herein or elsewhere in the Condominium Documents, unless otherwise provided, the terms used shall be as defined in the Act and as herein provided:

1.1 **"Act" or "Condominium Act"** means the Condominium Act (Chapter 718, Florida Statutes, 2010), as it now exists or as it may be amended from time to time, including the definitions therein contained.

1.2 **"Articles"** means Articles of Incorporation as attached hereto as Exhibit "B."

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

1.4 **"Association"** means ARBOR TRACE CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

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

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

1.7 **"Building"** means the structures in which the Units and portions of the Common Elements are located.

1.8 **"Bylaws"** mean the Bylaws of the Association as attached hereto as Exhibit "C."

1.9 **"Charge"** means any legal or equitable indebtedness or sums owed to or due to the Association, Service Provider, or Tower Trace, LLC, incurred by, or on behalf of, a Unit Owner or Resident, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents. Charges specifically include, but are not limited to, all sums due from a Unit Owner or Resident pursuant to a Use and Service Agreement.

1.10 **"Common Elements"** mean and include:

1.10.1 The portions of the Condominium Property not included within the Units.

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

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

1.10.4 The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

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

1.11 **"Common Expenses"** means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Common Expenses include, but are not limited to, such items as cost of premiums for property and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, interior Unit pest control, utility bills that are not separately metered to individual Units, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of bulk cable, master antenna television, and bulk contracts for services described in Section 202, Florida Statutes (2010), may be contracted

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for by the Board, but the costs may be assessed against Units equally, as provided by the Act. Common Expenses also include reasonable insurance for Directors and Officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or Condominium Property. Common Expenses also include the expenses of any items or services required by any federal, state, or local governmental entity to be installed, or supplied to the Condominium Property by the Association, including, but not limited to, fire safety equipment or water and sewer service where a master meter services the Condominium. Costs, expenses, and obligations of the Association pursuant to Operating Agreement are Common Expenses.

**1.12 "Common Surplus"** means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, above the amount of the Common Expenses.

**1.13 "Condominium Documents"** means this Declaration; the Surveyor's Plat and Site Plans, hereinafter collectively referred to as "the Plat", copies of which are attached hereto as Exhibit "A"; Articles of Incorporation of Arbor Trace Condominium Association, Inc. attached as Exhibit "B"; Bylaws attached hereto as Exhibit "C"; and Rules and Regulations. The Rules and Regulations need not (but may) be recorded in the County Public Records in order to be valid.

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

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

**1.16 "County"** means the County of Collier, State of Florida.

**1.17 "Declaration" or "Declaration of Condominium"** means this instrument, and as it may be amended from time to time.

**1.18 "Domestic Partners"** means two adults who have chosen to share their lives in a committed relationship that includes a mutual and exclusive commitment to each other's well-being, wherein each partner shares the same permanent address, have no blood relationship that would preclude marriage in the State of Florida, are of the age of legal majority, are jointly responsible for each other's common welfare, share financial interdependence and mutual

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obligation akin to those of marriage. Domestic Partners shall be considered as married individuals for the purpose of the Declaration.

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

**1.19.1** One natural person, his spouse or Domestic Partner, if any.

**1.19.2** Not more than two natural persons not meeting the requirement of Section 1.19.1 above, but who customarily and continuously reside together as a single housekeeping Unit.

**1.19.3** The reference to "natural" herein is intended to distinguish between an individual and a corporation or other artificial entity. "Family" member is a person who resides in a Unit as part of the Owner's Family, but is not a title holder.

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

**1.21 "Guest"** means any person who is not the Unit Owner or a Tenant or a member of the Owner's or Tenant's Family, who is physically present 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.

**1.22 "Insurable Improvements"** shall mean the "Buildings" as defined in Section 1.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and those portions of the Condominium Property required by the Act to be insured by the Association. If a Unit Owner has replaced any glass with impact glass which meets the applicable code at the time of such replacement, such glass and its related framework shall be considered part of the Insurable Improvements, unless prohibited by law.

**1.23 "Invitee"** a person or persons allowed entry for the purpose of conducting business with a Unit's occupant, or otherwise entering the Condominium Property on a temporary basis at the express or implied consent of the Unit Owner, including contractors, workmen, delivery persons, domestic assistants and health care assistants.

**1.24 "Lease,"** when used in the context of the renting of Units, means the grant by a Unit Owner of a right of use of the Owner's Unit for consideration.

**1.25 "Lien for Charges"** means a lien which is recorded to secure a Charge.

**1.26 "Limited Common Elements"** shall include property which is reserved for the use of a certain Unit to the exclusion of other Units as reflected on the Condominium Plat or in



this Declaration. Unless the context requires otherwise, all references in this Declaration to Common Elements shall include Limited Common Elements. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (by way of example, but not limitation, air conditioning compressors) shall serve to define the area as a Limited Common Element.

**1.27 "Limited Common Expense"** means those expenses affiliated with the maintenance, repair, replacement, or reconstruction after casualty of a Limited Common Element, the costs of which are assessed only against the benefiting Unit Owner(s), as authorized by Section 718.113(1) of the Act, and if so provided in this Declaration.

**1.28 "Member"** means the record Owner(s) of legal title to a Unit.

**1.29 "Occupant"** when used in connection with a Unit, means a person who is physically present in a Unit on two or more consecutive days, including staying overnight for one night.

**1.30 "Operating Agreement"** means that certain Operating Agreement dated December 22, 2007, between a Tower Pointe at Arbor Trace Condominium Association, Inc., a Florida Non Profit Corporation and Arbor Trace Condominium Association, Inc., a Florida Non Profit Corporation, providing for the operation of Tower Trace, LLC, and as same may be amended from time to time.

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

**1.32 "Resident"** means any person who is not a Unit Owner who resides in a Unit for thirty (30) or more days per calendar year, and includes all Tenants and any other persons who so reside in a Unit.

**1.33 "Rules and Regulations"** means those rules and regulations promulgated by the Board of Directors, governing the use, occupancy, alteration, maintenance, transfer and appearance of Units, Common Elements and Limited Common Elements, and the operation and administration of the Association, subject to any limits set forth in the Declaration of Condominium.

**1.34 "Service Center"** means the facility established to provide various services to the Unit Owners and Residents in the Arbor Trace Condominium and Tower Pointe at Arbor Trace Condominium. This facility includes a parcel of land and the improvements thereon, situated adjacent to the respective Condominiums, which provides dining services, recreational facilities,

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convalescent facilities and other services to the Residents of the respective Condominiums. The Service Center is owned and operated by the Service Center Owner.

**1.35** "Service Center Owner" shall mean Tower Trace, LLC, a Florida limited liability company, its successors and assigns.

**1.36** "Service Provider" means the entity or entities which manage and/or operate the Service Center, pursuant to agreements between the Service Center Owner and the Service Provider.

**1.37** "Tenant" or "Lessee" means a person occupying a Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-owner involves consideration, the payment of money, the exchange of goods and services, etc. The term "Tenant" shall be used interchangeably with "Lessee".

**1.38** "Unit" means a part of the Condominium Property subject to exclusive ownership.

**1.39** "Unit Owner" or "Owner" means the record Owner of a Condominium Parcel.

**1.40** "Use and Service Agreement" is the agreement between each Unit Owner, Resident and the Service Provider, as it exists from time to time. The rights, duties and obligations of each Unit Owner and Resident and Service Provider (or Service Provider's designee) under this Declaration shall be subject to the Use and Service Agreement entered into between the Unit Owner and Resident and Service Provider (or Service Provider's designee).

**1.41** "Utility Services" as used in the Condominium Act and as construed with reference to this Condominium, and as used in the Declaration and Bylaws, shall include but not be limited to electric power, gas, hot and cold water, heating, refrigeration, air conditioning and garbage and sewage disposal.

**1.42** "Voting Interests" means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters. There are 91 Units, so the total number of Voting Interests is 91.

**2. STATEMENT OF CONDOMINIUM DECLARATION.** NAPLES DEVELOPMENT GROUP, a general partnership, submitted the property described in Exhibit "A" hereto and as described above to condominium ownership in accordance with Florida Statutes.

**3. CONDOMINIUM NAME.** The name by which this condominium is identified is "Arbor Trace, A Condominium".

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be as indicated on the Surveyor's Plat, Exhibit "A."

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5. **SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land previously submitted to condominium ownership and a plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the Surveyor's Plat which is attached as Exhibit "A".

6. **VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the Owner of each Unit shall be 1/91<sup>st</sup> (one Voting Interest per Unit). Voting rights may be suspended pursuant to the terms of the Condominium Documents and/or Florida Law. Suspension of voting rights shall not affect the total number of Voting Interests, nor shall it affect the basis for which Common Expenses are shared or Common Elements and Common Surplus are owned. The sharing of Common Expenses (except bulk cable and telecommunication services, which may be shared equally as provided in the Act) and ownership of Common Elements and Common Surplus shall be on the following basis:

| Number of Units | Type of Unit | Percentage per Unit | Total percentage per Unit Type |
|-----------------|--------------|---------------------|--------------------------------|
| 10              | "A"          | .658%               | 6.580%                         |
| 20              | "B"          | .841%               | 16.820%                        |
| 11              | "C"          | 1.135%              | 12.485%                        |
| 19              | "D"          | 1.043%              | 19.817%                        |
| 5               | "E"          | 1.494%              | 7.470%                         |
| 20              | "F"          | 1.371%              | 27.420%                        |
| 6               | "G"          | 1.568%              | 9.408%                         |
| 91 Units        |              |                     | 100%                           |

7. **COMMON ELEMENTS; EASEMENTS.**

7.1 **Definition.** The term "Common Elements" means all of the property submitted, and as defined in Section 1.10, to condominium ownership that is not within the Unit boundaries set forth in Article 8 below.

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, unless released in connection with termination of the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any lien encumbering

these easements shall automatically be subordinate to the rights of the Unit Owners with respect to such easements.

**7.2.1 Utility and Other Easements.** The Association, through the Board of Directors, has the power, without joinder of any Unit Owner, to grant, modify or move easements such as electric, gas, cable television, or other access, utility or service easements, or relocate any existing easements, in any portion of the Common Elements or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. The Association, through the Board of Directors, may also transfer title to utility-related equipment, facilities or material, and may take any other action to satisfy the requirements of any utility company or governmental agency.

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

**7.2.3 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner and Occupant, their respective Guests, Tenants, and Invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portion of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portion of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

**7.2.4 Maintenance, Repair and Replacement.** Easements through, over and beneath the Units and Common Elements for maintenance, repair and replacement of the Units and Common Elements. Such access to the Units shall be only during reasonable hours except that access may be had at any time in case of emergency.

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

**7.2.6 Mutual Declaration of Covenants and Restrictions Respecting Shared Facilities and Grant of Reciprocal Cross Easements.** The Association is a party to that certain Mutual Declaration of Covenants and Restrictions Respecting Shared Facilities and Grant of Reciprocal Cross Easements, recorded at O.R. Book 2647, Page 1113, *et seq.*, Public Records of Collier County, Florida on March 3, 2000.

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership on the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or

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separately hypothecated. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

**8. CONDOMINIUM UNITS AND APPURTENANCES.** Condominium Units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A." The horizontal and vertical boundaries of the Condominium Units shall be as follows:

**8.1 Horizontal Boundaries:** The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

**8.1.1 Upper Boundary** – the horizontal plane of the undecorated finished ceiling.

**8.1.2 Lower Boundary** – the horizontal plane of the undecorated finished floor.

**8.2 Vertical Boundaries:** The perimetrical boundaries of the Unit shall be the vertical planes of the undecorated finished interior of the walls bounding the Unit extended to the intersections with each other and with the upper and lower boundaries.

Included in the Units are all glass and other transparent material in the walls of the Units, insect screens and screening in windows and doors and the materials covering other opening in the exterior of the Units.

**8.3 Exclusions from Units.** Not included in the Units are:

**8.3.1** All pipes, ducts, vents, wires, conduits, and other facilities, equipment or fixtures running through any interior wall, or horizontal or vertical portion of a Unit for the furnishing of utility services, heating, cooling or ventilation to Units, Common Elements or Limited Common Elements.

**8.3.2** All spaces and improvements lying beneath the undecorated or unfinished inner surface of all interior columns, bearing walls and bearing partitions.

**8.3.3** All spaces and improvements lying beneath the undecorated or unfinished inner surface of the perimeter walls and floors, and above the lowest horizontal plane of the upper structural element of each Unit.

**8.4 Exclusive Use.** Each Unit Owner shall have the exclusive use of his Unit.

**8.5 Appurtenances.** The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described, all of the rights, title and interest including but not limited to:

**8.5.1 Common Elements.** An undivided share of the Common Elements, such undivided share to be that portion set forth in Article 6 hereof.

**8.5.2 Easements.** For the benefit of the Unit.

**8.5.3 Association Membership** and interest in funds and assets held by the Association.

**8.5.4 Limited Common Elements.** The right to exclusive use of the Limited Common Element designated by this Declaration. The privilege of using one assigned parking space within the area designated on the Plat for parking.

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

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

**9.1 Association Maintenance.** The maintenance, repair and replacement of all Common Elements (except those Limited Common Elements for which this Declaration delegates responsibility to the Unit Owner) and Association Property shall be performed by the Association, and the cost is a Common Expense, except as may otherwise be specifically noted with respect to Limited Common Elements.

**9.1.1 General Exterior Maintenance.** The Association's maintenance, repair and replacement responsibility shall include, but not be limited to, exterior painting, roofing, maintenance of parking facilities (except as otherwise provided herein to the contrary), and maintaining portions of the Condominium Property exposed to the elements, but shall not include maintenance, repair and replacement of windows, sliding glass doors, hurricane shutters, screen frames, nor any alteration or addition to the Condominium Property made by a Unit Owner or his predecessors in title, nor any portions of the Condominium Property exposed to the elements for which this Declaration delegates responsibility to the Unit Owner.

**9.1.2 Plumbing and Electrical.** The Association's maintenance, repair and replacement responsibility includes, except as may be specifically otherwise provided to the contrary, without limitation: all electrical conduits and installations located from the breaker box outward; electrical conduits and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements; plumbing fixtures and installations located within or outside a Unit for the furnishing of utilities to another Unit, more than one Unit, or the Common Elements. The Association's maintenance, repair and replacement responsibility does not include electrical fixtures, switches or receptacles, plumbing

fixtures, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit.

**9.1.3 Screens and Frames.** The Association shall maintain, repair and replace all window screens, screen doors or terrace screens (excluding the hardware and framing, which shall be the maintenance, repair and replacement responsibility of the Unit Owners).

**9.1.4 Incidental Damage.** If, in connection with the discharge of its maintenance, repair or replacement responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain, repair, or replace, the Association shall be responsible for reinstallation or replacement of that item, including cabinetry, drywall and moldings, to its unfinished state, and excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, provided that the Association's obligations are limited to the replacement of items that were part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality, and except in cases of casualty repair, which shall be governed by Article 13 of this Declaration. Repair or replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner, specifically including but not limited to hurricane shutters which the Association must remove in connection with the maintenance of the Building, although the Association may have shutter reinstallation work performed by its contractor, and the Unit Owner will be responsible for reimbursement to the Association as a Charge.

**9.2 Unit Owner Maintenance.** Each Unit Owner is responsible, at his own expense, for all maintenance, repair, and replacement of his own Unit and those Limited Common Elements serving his Unit, if so provided herein, whether ordinary or extraordinary including, without limitation:

**9.2.1 Windows.** The Unit Owner shall maintain, repair and replace the window installations originally installed by the Developer. Same includes the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owners shall be responsible for interior window locking and opening mechanisms, the window sill and glass breakage due to any cause.

**9.2.2 Drywall.** The Unit Owner shall maintain, repair and replace all drywall within the Unit, the finishes thereof (including trim), and the structural framing related thereto, including studs and insulation.

**9.2.3 Electrical.** The Unit Owner shall maintain, repair and replace all electrical fixtures/facilities located within the Unit, which service only the individual Unit plus all electrical facilities from the electrical meter inward, which service only that Unit.

**9.2.4 Sliding Glass Doors.** The Unit Owner shall maintain, repair and replace sliding glass doors and the structural components thereof (including frames and fixed panels), including trim and caulking.

**9.2.5 Unit Front Door.** The Unit Owner shall maintain, repair and replace Unit front entry door, except that the Association may paint the exterior or entry doors.

**9.2.6 Other Doors.** The Unit Owner shall maintain, repair and replace all other doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit.

**9.2.7 Plumbing and Mechanical.** The Unit Owner shall maintain, repair and replace the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations.

**9.2.8 Appliances.** The Unit Owner shall maintain, repair and replace appliances.

**9.2.9 Heating and Air Conditioning Equipment; Ductwork.** The Unit Owner shall maintain, repair and replace all portions of the heating and air conditioning equipment (including compressors, air handlers, ductwork, freon lines and discharge lines) and utility installations and connections serving an individual Unit, no matter where located, dryer vents to the point of termination (even if exterior to the Unit), air conditioner discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit).

**9.2.10 Floor Coverings.** The Unit Owner shall maintain, repair and replace carpeting and other floor covering (including terrace areas).

**9.2.11 Hardware and Locks.** The Unit Owner shall maintain, repair and replace door and window hardware and locks. However, the deadbolts on all Unit entry doors shall be maintained, repaired and replaced by the Association and may not be changed by a Unit Owner without prior approval of the Association.

**9.2.12 Other Facilities and Fixtures.** The Unit Owner shall maintain, repair and replace all other facilities or Fixtures located or contained entirely within a Unit which serve only that Unit.

**9.2.13 Plumbing (Incoming).** The Unit Owner shall maintain, repair and replace all incoming plumbing from the shut-off valve (at hot water) inward.

**9.2.14 Plumbing (Outgoing).** The Unit Owner shall maintain, repair and replace outbound plumbing until the point of connection to a vertical disposal, even if outside the Unit boundary.



All said areas, if located outside of the boundaries of the Unit, are declared Limited Common Elements.

**9.3 Additional Unit Owner Obligations.** In connection with his maintenance, repair and replacement obligations, the Unit Owner shall have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the Condominium Property visible from any exterior vantage; excavation; access to the Building roof; removal, modification or relocation of any interior partitions or walls, whether load-bearing or not; relocation of cabinets or appliances; relocation of utility, plumbing, or electrical installations or fixtures or ductwork; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the Condominium and its residents or the aesthetics of the Condominium Property, as determined by the Board. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

- Preservation of uniformity of appearance;
- Use of licensed and insured contractors;
- Right (but not duty) of oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.
- Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction.
- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.

Unit Owners may not engage in "extensive" remodeling work or "heavy" construction activity, except with prior approval of the Board of Directors, and then, only during the months of May through October, inclusive. "Extensive" remodeling and "heavy" construction shall be as defined by the Board of Directors from time to time, but, whether so defined or not, shall include, but not be limited to, activities involving the following:

- Activities involving the use of power equipment such as jackhammers, drills, saws, and the like, which create substantial noise, as determined by the Board.

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- Activities resulting in the creation of substantial noise that can be heard outside of the Unit, regardless of whether power equipment is used or not, as determined by the Board.
- Activities rendering the Unit uninhabitable during the performance of the work.
- Activities requiring the storage of materials or equipment on the premises outside of the Unit.
- Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
- Activities requiring the use of scaffolding, booms, or other forms of exterior access.
- The Board may waive the prohibition against such work being done in the months of November through April in the case of an emergency or in *de minimus* cases or hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding for maintenance and repair of hurricane shutters.

Nothing shall preclude the Association from acting as the Owner's agent and obtaining the services of contractors to perform Unit Owner maintenance responsibilities in the event of an emergency, or in non-emergency situations, provided that in non-emergency situations, the Association and the Owner so agree, or absent such agreement when such work is deemed necessary, as determined by the Board to facilitate projects involving the Association's maintenance of the Condominium Property. In all such cases the Unit Owner shall be deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents through a Lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit, that all contractors and other persons performing services for the Unit Owner are properly licensed and insured, including required Worker's Compensation insurance, and that the Condominium Property is kept free from liens. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with this requirement.

**9.4 Terrace.** The Unit Owner who owns or has the right to the exclusive use of a terrace shall be responsible for the maintenance, care and preservation of: terrace floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the Building); the screen frames; storm shutters and other enclosures; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and Fixture(s) on or servicing the terrace; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of terrace floors, ceilings, screens, and exterior

portions, and also the Building walls enclosed by the balconies. Unit Owners may not puncture (by nails, hooks, screws or otherwise) terrace floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors.

**9.5 Unit Floor Coverings.** Hard surface floor materials, other than those originally installed by the Developer, such as vinyl or ceramic tiles, may not be applied to the floor surfaces of any portion of the Unit unless there is an approved form of some sound deadening or sound insulation material placed between such flooring and the unfinished floor surface of the Unit. Said hard floor material must be approved in writing by the Association prior to their installation.

**9.6 Alterations by Unit Owners.** No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior, or in any manner change the appearance of any portion of the Common Elements, or make any structural change within the Unit interior, without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or whole. "Structural" modifications or alterations include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" work shall also include the addition, removal, or relocation of any duct work, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances, and fixtures, with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" work shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permit from the appropriate governmental agency, whether or not mentioned above.

The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Arbor Trace, A Condominium, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the Unit Owners in the manner provided in Article 9.8 of the Declaration of Condominium, regardless of the cost or expense of such addition or alteration. If any Unit Owner requests approval of any structural alteration or modification, the Association may permit such removal or modifications if same would not materially affect or interfere with the utility

services constituting Common Elements, if any, located therein, the structural integrity of the Building or create a nuisance or disturbance to neighboring Units.

**9.7 Additional Unit Owner Responsibility for Alterations and Additions.** If a Unit Owner (or his predecessors in title) makes, or has made any modifications, installations, or additions to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, preservation, reconstruction, repair or replacement of the modifications, installations or additions and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Any modification, alteration, or addition to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the alteration, addition, or improvement (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent, although the Association may provide for stricter liability standards in contracts with contractors.

**9.8 Alterations by Association.** There shall be no material alterations or substantial additions to the Common Elements or Association real property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alterations or additions require or obligate the expenditure of Association funds of more than five percent of the Association's budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of a two-thirds (2/3) of Voting Interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire Voting Interests. Necessary maintenance of the Common Elements, or Association Property regardless of the level of expenditure, is the responsibility of the Board of Directors. Cellular antennae and similar apparatus may be placed on the Condominium Property as determined by the Board in agreements with third parties.

**9.9 Enforcement of Maintenance.** If, after reasonable notice, the Owner of a Unit fails to maintain the Unit or other portions of the Condominium Property as required by this Declaration, the Association shall have, without waiver of other remedies, the right to enter the Owner's Unit or Limited Common Element and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful actions to remedy such violation, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

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**9.10 Damage Caused by Conditions of the Condominium Property.** Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his intentional act or negligence, or by that of any member of his Family or his or their Occupants, Guests, Tenants or Invitees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure, maintain, repair, or replace if caused by the Owner's (or his Family Member's, Occupant's, Guest's, Tenant's or Invitee's) acts, negligence or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association or another Unit Owner relative to damage to the Condominium Property, to the extent the Association or other Unit Owner might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon the Unit Owner making the claim being adequately insured based on local standards and conditions, whether or not individual Unit Owner insurance is mandated by the Act. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss and without waiving any other remedy of the Association regarding Unit Owner insurance requirements. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability on the Association or other Unit Owners, but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in condominiums located in Florida's coastal communities, condominiums in general, including but not limited to damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, water seepage and leakage, and mold and mildew, regardless of whether such insurance is legally required. If one or more of the Units involved is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a Lien for Charges. Unit Owners are required to shut off all water valves when the Unit will be unoccupied for five (5) consecutive days, and failure to do so will create a presumption of negligence.

Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer, are always available to service the Unit. If Unit Owner fails to maintain Utility Services to Unit, the Association shall have, without waiver of other remedies, the right to enter to the Owner's Unit and Limited Common Element and take any and all lawful actions to make the utilities available to service the Unit, in which event the Unit Owner shall be charged for such

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activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.11 Combination of Units.** Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to a single living space. The Board may disapprove such request, based upon its discretion, and upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineer's or Architect's certification at the end of the work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes, and ordinances. The Owner (and his successor in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination or reconfiguration of the Unit. Should the Board, in its discretion, determine that the Association must retain independent professionals to review the request, including but not limited to engineers, architects, or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses. Units which have been combined shall, after combination, be used only as a "single family" residence (including rental rights), and may not be used as two living quarters. Units which have been combined shall constitute two Units for purposes of sharing Common Expense, ownership of Common Elements, and voting rights. If Units which have been combined are sold, they shall be sold as a single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be re-configured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve the reconfiguration. Without limitation, the Board shall have the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two living spaces is done in accordance with all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units.

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

The Board may, subject to the provisions of Section 718.3026, and the approval of a majority of Voting Interests of the Condominium, install hurricane shutters or hurricane protection that complies with or exceeds the applicable building code, or both, except that a vote of the Owners is not required if the maintenance, repair, and replacement of hurricane shutters or other forms of hurricane protection are the responsibility of the Association pursuant to this Declaration. However, where hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection which complies with or exceeds the current applicable

building code has been previously installed, the Board may not install hurricane shutters or other hurricane protection.

The Association shall be responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection authorized by this Article 9.12 if such hurricane shutters or other hurricane protection are the maintenance, repair and replacement responsibility of the Association pursuant to this Declaration. If the hurricane shutters or other hurricane protection authorized by this Article 9.12 are the maintenance, repair and replacement responsibility of the Unit Owners pursuant to this Declaration, the responsibility for the maintenance, repair, and replacement of such items shall be the responsibility of the Unit Owner.

The Board may operate shutters installed pursuant to this Article 9.12 without permission of the Unit Owners only where such operation is necessary to preserve and protect the Condominium Property and Association Property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the Common Elements or Association Property within the meaning of the Act or this Declaration.

Notwithstanding any provision to the contrary in the Condominium Documents, if approval is required by the Documents, a Board shall not refuse to approve the installation or replacement of hurricane shutters by a Unit Owner conforming to the specifications adopted by the Board.

The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection by the Board pursuant to this Article 9.12 shall constitute a Common Expense as defined herein and shall be collected in the manner of Common Expense Assessments generally, if the Association is responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection pursuant to this Declaration. However, if the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection is the responsibility of the Unit Owners pursuant to this Declaration, the cost of the installation of the hurricane shutters or other hurricane protection shall not be Common Expense, but shall be charged individually to the Unit Owners based on the cost of installation of the hurricane shutters or other hurricane protection appurtenant to the Unit. Notwithstanding the provisions of Section 718.116(9), and regardless of whether or not the Declaration requires the Association or Unit Owners maintain, repair, or replace hurricane shutters or other hurricane protection a Unit Owner who has previously installed hurricane shutters in accordance with Section 718.113(5) other hurricane protection or laminated glass architecturally designed to function as hurricane protection, which hurricane shutters or other hurricane protection or laminated glass comply with the current applicable building code, shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit. However, such Unit Owner shall remain responsible for the pro rata share of expenses for hurricane shutters or other hurricane protection installed on Common Elements and Association Property by the Board pursuant to Section 718.113(5), and shall remain responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters or other hurricane protection.

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**10. ASSESSMENTS AND CHARGES.** Assessments against Owners shall be made by the Board of Directors of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the basis set forth in Article 6 and elsewhere in these Condominium Documents.

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

**10.2 Default in Payment of Assessments for Common Expenses.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such parcel, with interest, late fees and for reasonable attorney's fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. If prohibited by the Act, no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4), Florida Statutes (2010), as amended from time to time. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. The Association's lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment, the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien.

**10.3 Notice of Intention to Foreclose Lien.** For so long as required by law, no foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least thirty days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been



accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this sub-section are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4 Attachment of Rental Income When Unit is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the tenant with copy to Unit Owner) from Units in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action as the Board deems appropriate without same constituting a waiver or election of remedies.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2010), as amended from time to time.

**10.6 Possession of Unit.** Any person who acquires an interest in a Unit, except first mortgagees through foreclosure of a first mortgage of record (or deed in lieu thereof), including without limitation persons acquiring title by operation of law, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid Assessments and other sums due and owing by the former Owner, if any, have been paid. Possession shall be subject to all other Association requirements pertaining thereto.

**10.7 Certificate of Unpaid Assessments.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

**10.8 Lien for Charges.** There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an

individual Unit Owner or Resident, or Charges which arise pursuant to the Use and Service Agreement, or expenses which the Association incurs in regard to a Unit Owner or Resident and which is not otherwise secured by the statutory lien for Common Expenses. The Lien for Charges shall secure any and all amounts related to or arising from a Use and Service Agreement. Further, by way of example, but not limitation, a Lien for Charges also exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

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

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

**11.1 Access.** The irrevocable right of access to each Unit during reasonable hours as may be necessary for the maintenance, repair or replacement of the Condominium Property, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements, or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. The Association may require that a pass key be posted for each Unit and may, if determined advisable by the Board, implement a master key system.

**11.2 Assessments.** The power to make and collect regular and special Assessments and other Charges against Unit Owners and to lease, maintain, repair, and replace the Common Elements and Association Property.

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

**11.4 Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operation of the Association and use of the Condominium Property.

**11.5 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property.** The power to acquire or transfer real property owned by the Association or otherwise convey and mortgage real property for the use and benefit of its Members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval shall be required to purchase (or mortgage) a Unit through foreclosure, deed in lieu of foreclosure, or in connection with the Association's right of first refusal set forth in Article 15 hereof. Leasing of Units, Common Elements or Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

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

**11.7 Fees for Use of Common Elements; Other Fees and Deposits.** Pursuant to Section 718.111(4), Florida Statutes (2010), as amended from time to time, the Board of Directors shall have the authority to set use fees for private use of Common Elements or Association Property, as well as the regulations and policies pertaining to such use. The Board of Directors may also establish other fees and deposits determined necessary by the Board. Without limitation, same include: fees for the issuance of parking passes or decals; move in-move out fees and damage deposits (if Association agents or personnel have to prepare the elevators, watch the movers, etc.); fees for remote control or other access devices; pet deposits or registration fees when pets are housed in a Unit; second or third car parking fees; fees for architectural/engineer review of renovation/alteration plans; contractor damage deposits; fees for hurricane preparation (moving furniture from terrace, then closing and opening shutters when Owner's away); and internet service, facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

**11.8 Lease of Association Property or Common Elements.** The power to lease Association Property or Common Elements, as determined by the Board of Directors, including, but not limited to, the lease of Building roof areas and other Common Elements for antennas or other telecommunications and similar equipment. No use fee may be charged against a Unit Owner for use of the Common Elements or Association Property except fees set by the Board

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pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement, or fees authorized by this Declaration of Condominium.

**11.9 Limitation Upon Liability of Association.** Notwithstanding the duty to maintain, repair, replace, insure or reconstruct parts of the Condominium Property, the Association is not liable to Unit Owners or any other person for injury or damage, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by any latent or unknown condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof.

Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property, including, without limitation, residents and their Families, Guests, Tenants, Invitees or for any property of any such persons. Without limiting the generality of the foregoing:

**11.9.1** It is the express intent of the Condominium Documents that the various provisions thereof which are enforceable by the Association, and which govern or regulate the use of the Condominium Property, have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the Condominium Property and the value thereof; and

**11.9.2** The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Collier County, and/or any other jurisdiction or the prevention of tortious or criminal activities; and

**11.9.3** Any provisions of the Condominium Documents setting forth the uses of Assessments which relate to health, safety and or welfare shall be interpreted and applied only as limitations on the uses of Assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision.

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As used in this section, "Association" shall include within its meaning all of the Association's Directors, Officers, Committee Members, and other persons the Association may be required to indemnify, to the extent and limit of such indemnity, and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer.

**11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.** Mold occurs naturally in almost all indoor environments. Mold spores may also enter a Condominium through open doorways, windows or a variety of other sources. The Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is conducive to the growth of mold and/or mildew. Mold and/or mildew may be present in the indoor air and/or on the interior surfaces of the Unit, including, but not limited to, wall cavities, windows, and/or on the exterior surfaces of the Unit or any part thereof. The Unit Owner can take positive steps to reduce and/or eliminate the occurrence of mold growth in and around the Unit and thereby minimize the possibility of adverse effects that may be caused by mold and/or mildew. The Board of Directors shall have the authority to adopt reasonable Rules and Regulations regarding maximum or minimum temperatures for Units and/or require that the air conditioning to the Units be set at a certain temperature/humidity settings to control humidity and mold and/or mildew growth, and/or adopt other Rules and Regulations intended to prevent mold and/or mildew.

The Association shall not be responsible for the prevention of mold and/or mildew or any damages, including, but not limited to any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all claims, obligations, demands, damages, causes of action, liabilities losses and expenses, whether now known or hereafter known, foreseen or unforeseen, that such person has, or may have in the future, in law or in equity against the Association, its Officers, Directors, and Committee Members (and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer) arising out of, relating to, or in any way connected with indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of mold and/or mildew or any chemical or toxin secreted therefrom.

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

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

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

**12.2 Coverage.**

**12.2.1 Property Insurance.** Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general property and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the replacement value thereof, including coverage for changes in building codes, if reasonably available and determined commercially practicable by the Board, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. The Association shall determine the replacement value of the Insurable Improvements through independent appraisal, at least every 36 months, so long as required by the Act. The Board shall establish deductibles, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductibles, as required by the Act, so long as required by the Act. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes (2010), as amended from time to time. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every property insurance policy issued to protect a Condominium building does not include: personal property in the Unit or Limited Common Elements; Unit floor, wall, or ceiling coverings; Unit or balcony electrical fixtures; appliances; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; and replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit. The Unit Owners shall also be responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title.

**12.2.2 Flood.** The Association shall use its best efforts to obtain and maintain adequate flood insurance, for replacement value, less a commercially reasonable deductible as determined by the Board, and less foundation and excavation costs if determined by the Board. The Association will have discharged its responsibility to use its "best efforts" to obtain "adequate" flood insurance if it is able to purchase flood insurance through the National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related program, or

through private carriers with similar coverage, for premium rates that are generally commensurate with flood insurance premium rates for condominiums in the local area.

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

**12.2.4 Fidelity Bond.** The Association shall obtain and maintain insurance or fidelity bonding of all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer of the Association.

**12.2.5 Worker's Compensation.** Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.

**12.2.6 Other Insurance.** Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage and insurance for the benefit of its employees.

**12.3 Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features (including but not limited to exclusions), as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible and other features shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated.

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

**12.5 Insurance Shares or Proceeds.** Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall



be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

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

**12.5.2 Unit; Proceeds On Account Of Damage To Units Shall Be Held In The Following Undivided Shares.**

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

**12.5.2.2 When The Condominium Building Is To Be Restored.** For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

**12.5.2.3 When The Condominium Building Is Not To Be Restored.** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.2.4 Common Elements and Units.** When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of a common casualty, but insufficient proceeds for casualty repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then to damage to Units and Limited Common Elements, it being the intent of this provision that when there is a common casualty loss causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage

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

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

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

**12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Article 16.

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

**13. RECONSTRUCTION AFTER CASUALTY.** If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

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

**13.2 The Building.**

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

**13.2.2 Major Damage.** If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed two (2) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

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**13.2.3 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors, regardless of whether it is a material alteration or substantial addition as described in Article 9.8 and no vote of the Unit Owners shall be required. However, if the application of a governmental regulation or code requires that a building be elevated to or above the base flood elevation when it is reconstructed, the plans and specifications must be approved by all record owners and all record lienholders. Such approvals must be obtained within three (3) years after the casualty, and if such approvals are not obtained, the Condominium shall be terminated in accordance with the procedures in Article 13.

**13.2.4 Definition of "Uninhabitable".** For purposes of this Declaration, "uninhabitable" shall mean that the Board of Directors has concluded that the Condominium Property which the Association is required to insure cannot be restored to the condition (or a better condition) in which it existed prior to the casualty through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed 10% of the average fair market value of the units, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner's expense. A governmental agency's declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are "habitable", a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

**13.3 Responsibility.** All reconstruction work after a casualty for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board of Administration. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Article 13.5 below. If an Owner fails to repair and reconstruct those items that the Unit Owner is responsible for under this Declaration, the Association shall have, without waiver of other remedies, the right to proceed in accordance with Article 9.9, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a Lien for Charges.

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

**13.5 Assessments.** The cost of reconstruction after casualty for those portions of the Condominium Property required to be insured by the Association shall be considered a Common Expense, pursuant to Section 718.111(11)(j), Florida Statutes (2010), as amended from time to time.

**13.6 Termination of Condominium if Not Reconstructed.** If the Owners vote not to reconstruct the Condominium by vote described in Article 13.2.2 hereof, the Condominium shall be terminated in accordance with the procedures set forth in Article 13 hereof.

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

**13.7.1** To determine after a casualty whether the Units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Article 13.2. Such decision shall be based upon the advice of emergency management officials or a licensed professional.

**13.7.2** To declare any portion of the Condominium Property or Association Property unavailable for occupation by Owners, Family members, Tenants, or Guests after a casualty, including during the rebuilding process. Such decision by the Board shall be based upon the advice of emergency management officials or a licensed professional (such as an engineer) and can be made only if necessary to protect the health, safety, or welfare of the Association, Owners, Family members, Tenants, or Guests.

**13.7.3** To mitigate damage and take action to prevent the spread of fungus (including but not limited to mold and mildew) by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and dispose of damaged property or store such property onsite or at an offsite location, with Owners responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

**13.7.4** To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes, debris removal, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Unit Owner shall be responsible to reimburse the Association within ten (10) days of the Association's invoice. The Association's right to payment shall be secured by a

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Common Expense Lien as provided in the Act and actions to collect such sums shall entitle the Association to recover interest, late fees, attorney's fees, and other costs and expenses of collection.

13.7.5 To implement a disaster plan prior to, during or after an impending disaster including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

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

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

13.7.8 To enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

13.7.9 To exercise all emergency powers set forth in the Act.

14. **USE RESTRICTIONS.** Use of the property submitted for condominium ownership shall be in accordance with the following use restrictions and reservations:

14.1 **Occupancy of Units; Single Family Residence.** A Condominium Unit shall be used only as a Single Family residence. No Unit may be divided or subdivided into a smaller Unit nor any portion sold or otherwise transferred. No person may occupy a Unit as a Unit Owner, Tenant, Resident or Family member thereof (i.e., occupy the Unit on an overnight basis for more than thirty (30) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. Units may not be used for commercial or business purposes.

14.2 **Nuisance.** The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, nor which becomes a source of annoyance to the Condominium residents, or which will increase insurance rates. All property shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

14.3 **Housing For Older Persons.** In accordance with the Fair Housing Amendments Act of 1988 as amended by the Housing for Older Persons Act of 1995, and as provided in parallel state or local ordinances, all as amended from time to time, only persons fifty-five (55)

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years of age or older may be the permanent occupant of any Unit. The Board of Directors shall have the authority to establish additional regulations, if necessary, to define "permanent occupancy." It is the intention of this provision that the individuals who customarily reside in the Unit as their primary or seasonal residence will be the "permanent occupants," and must be age fifty-five (55) years of age or older. Any additional permanent occupant of the Unit, who is under the age of fifty-five (55) and age twenty-one (21) or older may occupy and reside in the Unit as a caregiver as long as the permanent occupants are age fifty-five (55) or older. Such caregivers must be approved by the Board of Directors and determined to be necessary for the permanent occupants' care. Persons under the age of fifty-five (55) years of age are not permitted to permanently occupy the premises, except as a caregiver. Such persons are entitled to visit and temporarily occupy the premises for non-consecutive periods of fifteen (15) days twice annually. The Board of Directors shall have the sole and absolute authority to deny occupancy of a Unit by any person(s) whose occupancy would violate this provision.

**14.4 Leasing.** After approval by the Association as provided in Article 15, entire Units may be rented, provided the occupancy is only by the Lessee and his Family, his servants and Guests. No rooms may be rented and no transient tenants may be accommodated. No lease shall be for a period of less than ninety (90) consecutive days. For the purpose of this paragraph, Tenant occupancy will be construed to be a non-related Guest while the Owner is not in residence or a paying Tenant pursuant to a lease arrangement. Family members of the Unit Owners shall not in any circumstances be considered as Tenants for the purpose of this paragraph, and may temporarily occupy the Unit with the permission of the Unit Owner without regard to whether the Owner is in residence. When a Unit is to be occupied by a Family member while the Owner is not in residence, the Owner shall, at least ten (10) days prior to the arrival of the Family member, notify the Association of such fact and shall further give the name of all persons who will be permitted to temporarily occupy the Unit as Family members.

**14.5 Age Restriction.** Persons under the age of fifty-five (55) years of age are not permitted to permanently occupy the premises, except as provided in Article 14.3 hereof. Such persons are entitled to visit and temporarily occupy the premises for non-consecutive periods of fifteen (15) days during each of the summer and winter vacations. For the purposes of this provision, the summer will be defined as that period from May 1<sup>st</sup> through November 30<sup>th</sup> each year, and winter shall be defined as that period from December 1<sup>st</sup> through April 30<sup>th</sup> each year. Any children temporarily visiting an Owner or Resident shall be closely supervised and care taken to insure that they do not become a nuisance to other Owners or Residents.

**14.6 Pets.** A total of two(2) cat and/or small dogs (not to exceed 20 inches in height measured at the shoulder, or 30 pounds of weight), may be kept on the premises; provided it is kept on a leash while outside its Owner's Unit and exercised only in areas designated for such purposes. In the event that any pet kept on the premises should constitute a nuisance in the opinion of a majority of the Board of Directors, then the Owner, when so notified in writing, shall be required to immediately remove said pet or dog from the premises.

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**14.7 Signs.** No signs, advertisements or notices of any type and no exterior antennae or aerials shall be erected upon the Common Elements. Provided, however, that Board of Directors in their regulations may vary these requirements.

**14.8 Storage Areas.** Owners must store all personal property within their respective Units or in designated storage areas. Each floor in Buildings #2 and 9 have a designated storage area which may only be utilized by Owners of Units located on such floor.

**14.9 Association Employees.** Employees of the Association are not to be utilized by Unit Owners for personal services or any purpose other than Association business.

**14.10 Absence.** The Association shall be notified in the event a Unit Owner plans to be away from his Unit for a period of more than seven (7) days. Such notification shall include an address and phone number where the Unit Owner can be reached in case of an emergency and the expected date of the Owner's return.

**14.11 Dress.** Owners and their Guests shall be in proper attire at all times when using the common area facilities.

**14.12 Additional Restrictions.** Attached as Exhibit "D" are the Rules and Regulations, which may be amended from time to time by the Board of Directors. Amendments to the Rules and Regulations may, but need not be recorded in the Public Records. Additional use restrictions are also contained elsewhere in the Condominium Documents.

**15. MAINTENANCE OF COMMUNITY INTERESTS.** In order to maintain a community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any Owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

**15.1 Forms of Ownership:**

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

**15.1.2 Co-Ownership.** Co-ownership of Units may be permitted. If the co-owners are other than husband and wife or Domestic Partners, 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 was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in Primary Occupant will be approved in any calendar year, except in connection with transfer of title or hardship, including but not limited to death of an approved Primary Occupant. No time share

estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

**15.1.3 Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities.** A Unit may be owned in trust, or by a corporation, partnership, limited liability company, or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional ownership, or used as Guest accommodations for employees, customers, or Guests of Units owned by business entities, religious, or charitable organizations, and the like. The approval of a partnership, trustee, or corporation, limited liability company, 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 Unit Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Unit, and exercise rights of membership. Any change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in designation of Primary Occupant will be approved in any twelve (12) month period, except in connection with transfer of title or hardship, including but not limited to death of an approved Primary Occupant.

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

## **15.2 Transfers Subject to Approval.**

**15.2.1 Sale.** No Unit Owner may dispose of a Unit or any interest in any Unit by sale, without approval of the Association.

**15.2.2 Lease.** No Unit Owner may dispose of a Unit or any interest in any Unit by lease, including extension or renewal, without approval of the Association.

**15.2.3 Gift.** If any Unit Owner shall acquire his title by gift, the continuance of his ownership of his Unit shall be subject to the approval of the Association.

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**15.2.4 Devise or Inheritance.** If any Unit Owner shall acquire his title by devise, inheritance, the continuance of his ownership of his Unit shall be subject to the approval of the Association.

**15.2.5 Other Transfers.** If any Unit Owner shall acquire his title by any manner not considered in the foregoing subsections, the continuance of his ownership of such Unit shall be subject to the approval of the Association.

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

**15.3.1 Notice to Board of Directors.**

**15.3.1.1 Sale.** A Unit Owner intending to make a bona fide sale of his Unit or any interest in it, shall give to the Association notice of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice at the Unit Owner's option may include a demand by the Unit Owner that the Association furnish a purchaser of the Unit if the proposed purchaser is not approved; and if such demand is made, the notice shall be accompanied by an executed copy of the proposed contract to sell.

**15.3.1.2 Lease.** A Unit Owner intending to make a bona fide lease of his Unit or any interest in it shall give to the Association notice of such intention, together with the name and address of the intended Lessee, such other information concerning the intended Lessee as the Association may reasonably require and an executed copy of the proposed lease.

**15.3.1.3 Gift, Devise or Inheritance; Other Transfers.** A Unit Owner who has obtained his title by gift, devise or inheritance, or by any other manner not previously considered, shall give to the Association notice of the acquiring of his title, together with information concerning the Unit Owner as the Association may reasonably require, and a certified copy of the instrument evidencing the Owner's title.

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

**15.3.2 Certificate of Approval.**

**15.3.2.1 Sale.** If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information, the Association must either approve

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or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the Association in recordable form, which shall be recorded in the public records of Collier County, Florida, at the expense of the purchaser.

**15.3.2.2 Lease.** If the proposed transaction is a lease, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the Association and delivered to the Lessee.

**15.3.2.3 Gift, Devise or Inheritance; Other Transfers.** If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt of such notice and information, the Association must either approve or disapprove the continuance of the Unit Owner's ownership of his Unit. If approved, the approval shall be stated in the public records of Collier County, Florida, at the expense of the Unit Owner.

**15.3.3 Approval of Occupant.** If the Unit Owner or purchaser is a corporation, partnership, trust or some other entity, the approval of ownership by the corporation, partnership, trust or other entity may be conditioned upon requiring that the persons occupying the Unit be approved by the Association.

**15.4 Disapproval by Association.** If the Association shall disapprove a transfer of ownership of a Unit, the matter shall be disposed of in the following manner:

**15.4.1 Sale.** If the proposed transaction is a sale and if notice of same given by the Unit Owner shall so demand, then within thirty (30) days after receipt of such notice and information the Association shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Association who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

**15.4.1.1** At the option of the purchaser to be stated in the agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be the fair market value determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Unit Owner and the other of whom shall be appointed by the Association, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

**15.4.1.2** The purchase price shall be paid in cash.

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**15.4.1.3** The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later.

**15.4.1.4** A certificate of the Association executed by the Association approving the purchaser shall be recorded in the public records of Collier County, Florida, at the expense of the purchaser.

**15.4.1.5** If the Association shall fail to provide a purchaser upon the demand of the Unit Owner in the manner provided, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded at the public records of Collier County, Florida, at the expense of the purchaser.

**15.4.2 Lease.** If the proposed transaction is a lease, the Unit Owner shall be advised of the disapproval in writing and the lease shall not be made.

**15.4.3 Gifts, Devise, or Inheritance; Other Transfers.** If the Unit Owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Association shall deliver or mail by registered mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Association who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

**15.4.3.1** The sale price shall be the fair market value determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the Association and the other of whom shall be appointed by the Unit Owner, who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

**15.4.3.2** The purchase price shall be paid in cash.

**15.4.3.3** The sale shall be closed within ten (10) days following the determination of the sale price.

**15.4.3.4** A certificate of the Association approving the purchaser shall be recorded in the public records of Collier County, Florida, at the expense of the purchaser.

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**15.4.3.5** If the Association shall fail to provide a purchaser as required by this instrument, or if a purchaser furnished by the Association shall default in his agreement to purchase, then notwithstanding the disapproval, such transfer ownership shall be deemed to have been approved, and the Association shall furnish a certificate of approval as elsewhere provided, which shall be recorded in the public records of Collier County, Florida, at the expense of the Unit Owner.

**15.5 Mortgage.** No Unit Owner may mortgage his Unit nor any interest in it without the approval of the Association except to a bank, life insurance company or a savings and loan association, or to a vendor to secure a portion or all of the purchase price. The approval of any other mortgagee may be upon conditions determined by the Association or may be arbitrarily withheld.

**15.6 Use and Serviced Agreement.** As a condition of taking title to a Unit, any person or entity acquiring title shall be obligated to agree, in a form reasonably acceptable to the Board, to enter into a Use and Service Agreement for the Owners and/or Residents in said Unit.

**15.7 Exceptions.** The foregoing provisions of this section entitled "Maintenance of Community Interests" shall not apply to a transfer to or purchase by a bank, life insurance company or savings and loan association or other mortgagee approved by the Association that acquires its title as the result of owning a purchase money first mortgage upon the Unit concerned, and this shall be so whether the title is acquired by deed from the mortgagor, or through foreclosure proceedings. However, a transferee of a first mortgagee shall be required to be approved by the Association, enter into a Use and Services Agreement, and comply with all other terms of the Condominium Documents as a condition of ownership and holding title to a Unit in Arbor Trace.

**15.8 Unauthorized Transactions.** Any sale or mortgage not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

**16. TERMINATION.** The Condominium may be terminated in the following manner in addition to the manner provided by the Condominium Act.

**16.1 Destruction.** In the event it is determined in the manner elsewhere herein provided that the improvements shall not be reconstructed because of total destruction or major damage, the Condominium plan of ownership will be thereby terminated without agreement.

**16.2 Agreement.** The Condominium may be terminated at any time by the approval in writing of all of the owners of Units in the Condominium, and by all mortgagees who have recorded their mortgages. If the proposed termination is submitted to a meeting of the Members of the Association, the notice of which meeting gives notice of the proposed termination, and if the approval of the Owners of Units to which not less than 80 percent of the Common Elements are appurtenant, and of the record owners of all mortgages upon Units in the Condominium owned by institutional lenders and other mortgagees approved by the Association, are obtained

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not later than thirty (30) days from the date of such meeting, then the approving Owners shall have an option to buy all of the Units of the non-approving owners during the period ending on the sixtieth (60<sup>th</sup>) day from the date of such meeting. Such option shall be upon the following terms:

**16.2.1 Exercise of Option.** The option shall be exercised by delivery or mailing by certified mail to each of the record owners of the Units to be purchased of an agreement to purchase signed by the record owners of Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating Owner and shall agree to purchase all of the Units owned by Owners not approving the termination, but the agreement shall effect a separate contract between each seller and his purchaser.

**16.2.2 Price.** The sale price for each Unit shall be the fair market values determined by agreement between the seller and purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be paid by the purchaser.

**16.2.3 Payment.** The purchase price shall be paid in cash.

**16.2.4 Closing.** The sale shall be closed within ten (10) days following the determination of the sale price. If for any reason the purchase of a particular Unit does not close, this shall not affect the validity of the purchase of the other Units.

**16.3 Certificate.** The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its appropriate officers with the formality of a deed certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Collier County, Florida.

**16.4 Shares of Owners After Termination.** After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares, and their respective mortgages and lienors shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same as the undivided shares in the Common Elements appurtenant to the Owners' Units prior to termination.

**16.5 Amendment.** This section concerning termination shall not be amended without written consent of all Unit owners and of all Owners of mortgages required to approve termination by agreement.

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## 17. CONDEMNATION.

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

**17.2 Determination Whether to Continue Condominium.** Whether the condominium will be continued after condemnation will be decided in the same manner as repair after casualty as set forth in Article 13 hereof.

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

**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 the condemning authority for the purpose of realizing just compensation for the taking.

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

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

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

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

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

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

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

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

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

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

## **18. COMPLIANCE AND DEFAULT.**

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

**18.1.1** The Association;

**18.1.2** A Unit Owner; or

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

**18.2 Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, Family member, Tenant, Guest, Invitee Unit Occupant or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal.

**18.3 No Election of Remedies.** All rights, remedies and privileges granted to the Association or Unit Owners under any terms, provisions, covenants, or conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the Condominium Documents, or at law or in equity.

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

**18.5 Notice of Lien or Suit.**

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

**18.5.2 Notice of Suit.** A Unit Owner shall give notice, in writing, to the Association of every suit or other proceeding which may affect the title to his Unit, or impose liability on the Association, such notice to be given five (5) days after the Unit Owner receives actual knowledge thereof.

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**18.5.3 Failure to Comply.** Failure of an Owner to comply with this Article 18.5 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

**19. OPERATION OF SERVICE CENTER.**

**19.1** In connection with the development of the Condominium, a separate facility has been established to provide various services to the Unit Owners or Residents in the Arbor Trace Condominium and Tower Pointe at Arbor Trace Condominium pursuant to individual 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 Unit Owners and Residents of the respective Condominiums. Convalescent facilities for persons other than Condominium Unit Owners and Residents 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 referred 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".

The Service Center is owned by the Service Center Owner, as evidenced by that certain Special Warranty Deed dated December 28, 2007, recorded at O.R. Book 4316, Page 408, *et seq.*, Public Records of Collier County, Florida. The Service Center Owner is Tower Trace, LLC, a Florida limited liability company. The two members of the Tower Trace, LLC are Arbor Trace Condominium Association, Inc. and Tower Pointe at Arbor Trace Condominium Association, Inc. The provisions for Association's participation in the Service Center Owner entity are as set forth in the Operating Agreement.

The Board of Directors of the Association is authorized to take all actions deemed necessary or appropriate by the Board of Directors, in its sole discretion, to accomplish the purposes of this Article 19. Without limitation, the authority of the Board of Directors, includes but is not limited to the power and authority to:

**19.1.1** Participate in the formation of and ongoing operation of one or more separate corporations, limited liability companies, partnerships, trusts, or other entities deemed appropriate for the ownership and operation of the Service Center; and

**19.1.2** Enter into agreements between the respective Associations and other parties for the ownership, management, and operation of the Service Center, including, but not limited to, those set forth in the Operating Agreement; and

Amended and Restated Declaration of Condominium  
(Page 45 of 49)

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19.1.3 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.

19.1.4 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

19.1.5 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

19.1.6 Borrow money to effectuate the purposes of this provision; and

19.1.7 Levy one or more special assessments against the Unit Owners in this Condominium in their respective share for assessments generally, to effectuate the purposes of this provision; and

19.1.8 Provide for the funding of ongoing costs relative to the ownership, management, or operation of the Service Center and membership in the Service Owner as part of the annual budget for the Association and/or addressing such needs through special assessment; and

19.1.9 Make material alterations or substantial additions to the Service Center, as may be determined by the Board of Directors, or as may be provided by the Operating Agreement, or as may be approved by action of the Managers of Service Center Owner; and

19.1.10 Make Rules and Regulations governing the use and operation of the Service Center, as may be provided by the Operating Agreement or action of the Managers of Service Center Owner; and

19.1.11 Enter into leases, licenses, management agreements, and other agreements deemed appropriate by the Association for the ownership or operation of the Service Center; and

19.1.12 Take all other actions deemed necessary by the Board of Directors, in its sole discretion, to effectuate the intent of this provision.

All costs and expenses incurred by the Association incident to this Article 19.1, shall be deemed a Common Expense. The share of said expenses applicable to this Condominium are declared a Common Expense, and shall be shared by the Unit Owners in this Condominium pursuant to the percentages of sharing Common Expenses contained in Article 6 of this Declaration.

**19.2 Use and Service Agreement.** Each Unit Owner and Resident agrees to and is deemed to have entered into the Use and Service Agreement, as exists from time to time, and comply with all the terms thereof. The Service Provider may offer Unit Owners and Residents

Amended and Restated Declaration of Condominium  
(Page 46 of 49)

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different options in Use and Service Agreements (including but not limited to number of meals), but may stipulate minimum requirements for Use and Service Agreements. Pursuant to the Use and Service Agreement, Service Provider (or its designee) will provide the various services as more particularly set forth in the Use and Service Agreement for a fee, which is set from time to time by the Service Provider (or its designee) in accordance with the Use and Service Agreement. Each Unit Owner and Resident are together jointly and severally liable for any and all obligations which arise under or pursuant to the Use and Service Agreement. A bona fide purchase money first mortgagee which takes title to a Unit pursuant to a foreclosure or deed in lieu of foreclosure is not deemed to have agreed to, or entered into, a contract for services, or is otherwise subject to the requirement to contract for services with the Service Provider, unless such mortgagee resides in, or places a Resident in such Unit. Any Service Provider may assign to the Association, without any further requirement or consent by any Unit Owner or Resident, any and all of its rights to collect any sums owed by any Unit Owner or Resident pursuant to any Use and Service Agreement. The Association is expressly declared to be a third party beneficiary of any Use and Service Agreement. The obligations of each Unit Owner and Resident arising under their individual Use and Service Agreement shall be secured by a contractual lien as set forth in the Service Agreement and a Lien for Charges as provided for in this Declaration.

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

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

**20.2 Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

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

**20.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3<sup>rds</sup>) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds (2/3<sup>rds</sup>) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the

Amended and Restated Declaration of Condominium  
(Page 47 of 49)

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Officers of the Association, upon Board approval, without need for Association membership vote.

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

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

## **21. MISCELLANEOUS PROVISIONS.**

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

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

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

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

**21.5 Compliance with Fair Housing Laws.** There shall be no limitation upon sale, lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin, or handicap. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the Condominium premises, or to comply with other legal requirements.

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

**21.7 Interpretation.** The Board of Directors shall be responsible for interpreting the provisions of the Condominium Documents. The Board's interpretations shall be binding upon

Amended and Restated Declaration of Condominium  
(Page 48 of 49)

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all parties unless wholly unreasonable. A written opinion rendered by Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the interpretation is valid.

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

**21.9 Waiver.** No provisions contained in the Condominium Documents shall be deemed to have been waived because of any failure to enforce the same, irrespective of the number of violations or breaches, which may occur.

**21.10 Plurality; Gender.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.

ACTIVE: 2148834\_10

Amended and Restated Declaration of Condominium  
(Page 49 of 49)

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**EXHIBIT A**  
**Survey and Site Plan**

SURVEYOR'S CERTIFICATE FOR  
BUILDINGS 2, 3, 4, 6, 8 and 9,  
ARBOR TRACE, A CONDOMINIUM

STATE OF FLORIDA  
COUNTY OF COLLIER

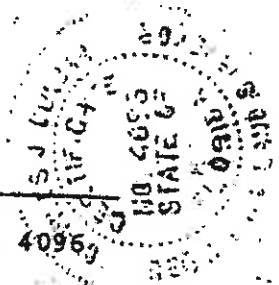
BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgements, personally appeared CHARLES J. DUNBAR, who after being first duly cautioned and sworn, deposes and says as follows:

1. That he is a duly registered land surveyor under the laws of the STATE OF FLORIDA, being Surveyor No. 4096.
2. That the survey prepared by Affiant being described as Agnoli, Barber & Brundage, Inc., Project No. 3908, File No. 3222 and attached to the Declaration of Condominium for ARBOR TRACE, a condominium, as Exhibit "A" (the "Survey"), is an accurate representation of the location and dimensions of Buildings 2, 3, 4, 6, 8 and 9 of Phase I, ARBOR TRACE, a condominium, so that the dimensions and locations of said Buildings can be determined from said Survey.

FURTHER AFFIANT SAYETH NOT.

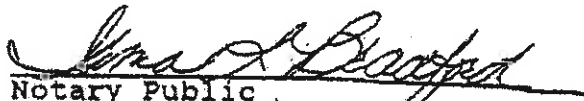


CHARLES J. DUNBAR  
Florida Certificate No. 4096



(Surveyor's Seal)

SWORN TO AND SUBSCRIBED before me on this 24th day of July, 1991, by CHARLES J. DUNBAR, Florida Land Surveyor No. 4096.



Notary Public  
State of Florida at Large  
My Commission Expires:

(Notary Seal)

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. OCT. 22, 1993  
BONDED THRU GENERAL INS. CO.

SURVEYOR'S CERTIFICATE FOR  
BUILDINGS 2, 3, 4, 6, 8 and 9,  
ARBOR TRACE, A CONDOMINIUM

STATE OF FLORIDA  
COUNTY OF COLLIER

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgements, personally appeared CHARLES J. DUNBAR, who after being first duly cautioned and sworn, deposes and says as follows:

1. That he is a duly registered land surveyor under the laws of the STATE OF FLORIDA, being Surveyor No. 4096.
2. That the survey prepared by Affiant being described as Agnoli, Barber & Brundage, Inc., Project No. 3908, File No. 3222 and attached to the Declaration of Condominium for ARBOR TRACE, a condominium, as Exhibit "A" (the "Survey"), is an accurate representation of the location and dimensions of Buildings 2, 3, 4, 6, 8 and 9 of Phase I, ARBOR TRACE, a condominium, so that the dimensions and locations of said Buildings can be determined from said Survey.

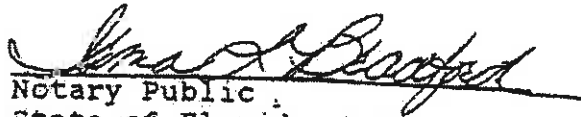
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
CHARLES J. DUNBAR  
Florida Certificate No. 4096



(Surveyor's Seal)

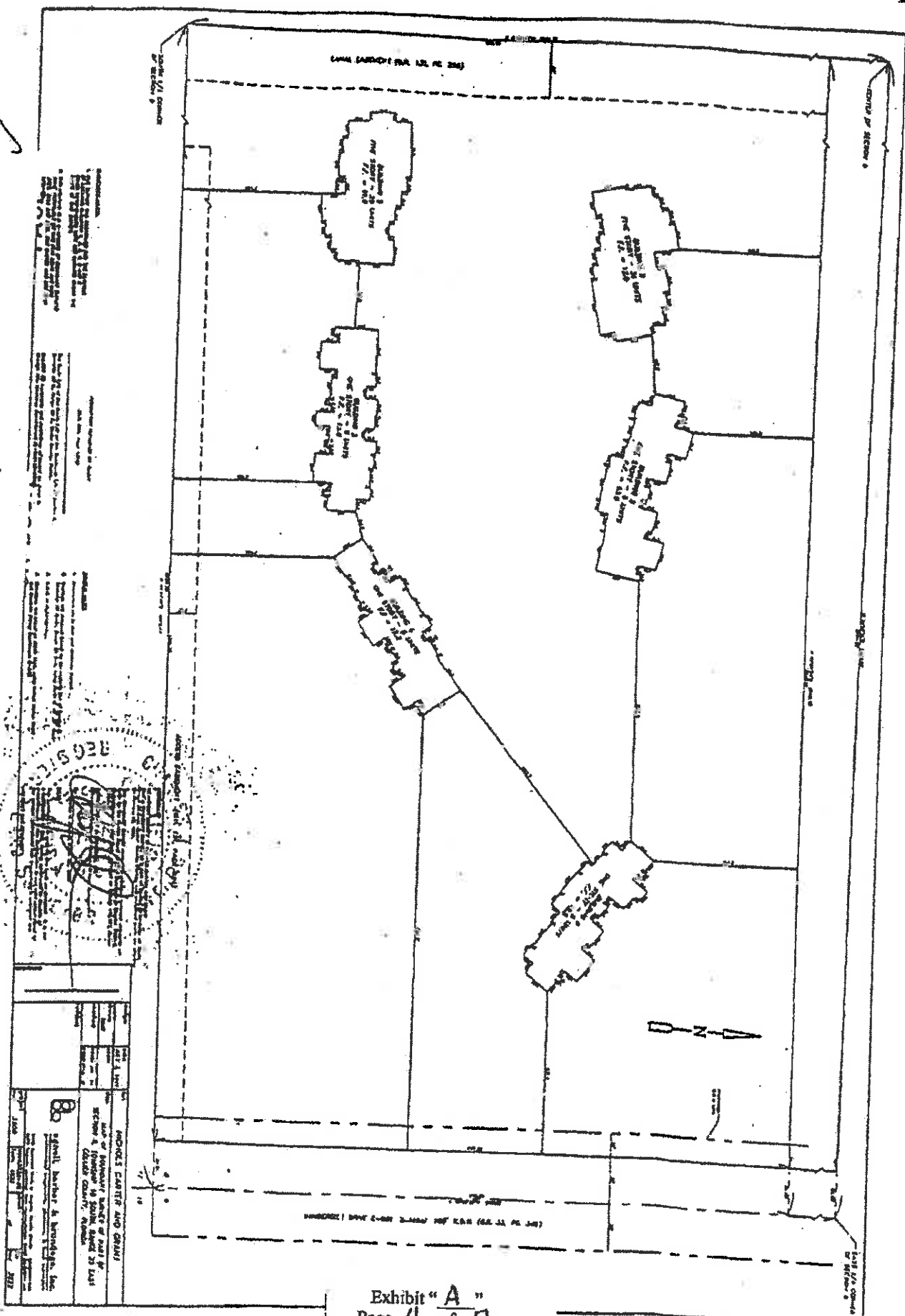
SWORN TO AND SUBSCRIBED before me on this 24th day of July, 1991, by CHARLES J. DUNBAR, Florida Land Surveyor No. 4096.

  
\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires:

(Notary Seal)

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. OCT. 22, 1993  
BONDED THRU GENERAL INS. USD.

# "EXHIBIT A"



PLEASE PRINT NAME AND ADDRESS OF THE PERSON TO WHOM THIS DEED IS TO BE DELIVERED.

THE STATE OF TEXAS, COUNTY OF DALLAS, BEFORE ME, the undersigned authority, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

My commission expires \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

*[Circular Notary Seal]*

|         |  |
|---------|--|
| NAME    | ANDRES CARTER AND GRANT                            |
| ADDRESS | 10000 W. LOOP WEST, SUITE 100, DALLAS, TEXAS 75243 |
| DATE    | 10/10/2007   |
| TIME    | 10:00 AM   |
| PLACE   | DALLAS, TEXAS                                      |
| OFFICE  | DALLAS COUNTY CLERK'S OFFICE                       |
| BOOK    | 10000  |
| PAGE    | 10000  |



PHASE ONE

The East 1383.46 feet of the South 1/2 of the South 1/2 of the Southeast 1/4 of Section 8, Township 48 South, Range 25 East, Collier County, Florida, LESS AND EXCEPT any portion of the following described out-parcel lying within the East 1383.46 feet of said property:

Beginning at a point on the South property line 1383.46 feet from the Southeast corner of the property and

thence N 00°45'30" W 31.42 feet;  
thence N 89°10'44" E 45.60 feet;  
thence N 37°28'12" E 357.47 feet;  
thence N 02°04'46" W 203.93 feet;  
thence S 89°25'54" W 67.98 feet;  
thence S 55°00'03" W 68.02 feet;  
thence N 33°50'07" W 93.21 feet;  
thence southwesterly 30.51 feet along the arc a circular curve concave to the southeast, having a radius of 275' and being subtended by a chord which bears S 49°27'43" W, 46°21'25";  
thence S 46°16'57" W 162.35 feet;  
thence S 01°23'01" E 122.12 feet;  
thence S 88°36'56" W 117.91 feet;  
thence S 01°23'01" E 184.66 feet;  
thence S 88°36'59" W 114.43 feet;  
thence S 42°12'43" E 13.85 feet;  
thence S 36°56'13" E 35.00 feet;  
thence S 13°10'54" E 28.55 feet;  
thence S 21°28'22" W 28.39 feet;  
thence S 09°44'28" E 28.02 feet;  
thence N 88°24'30" E 254.64 feet to the Point of Beginning.

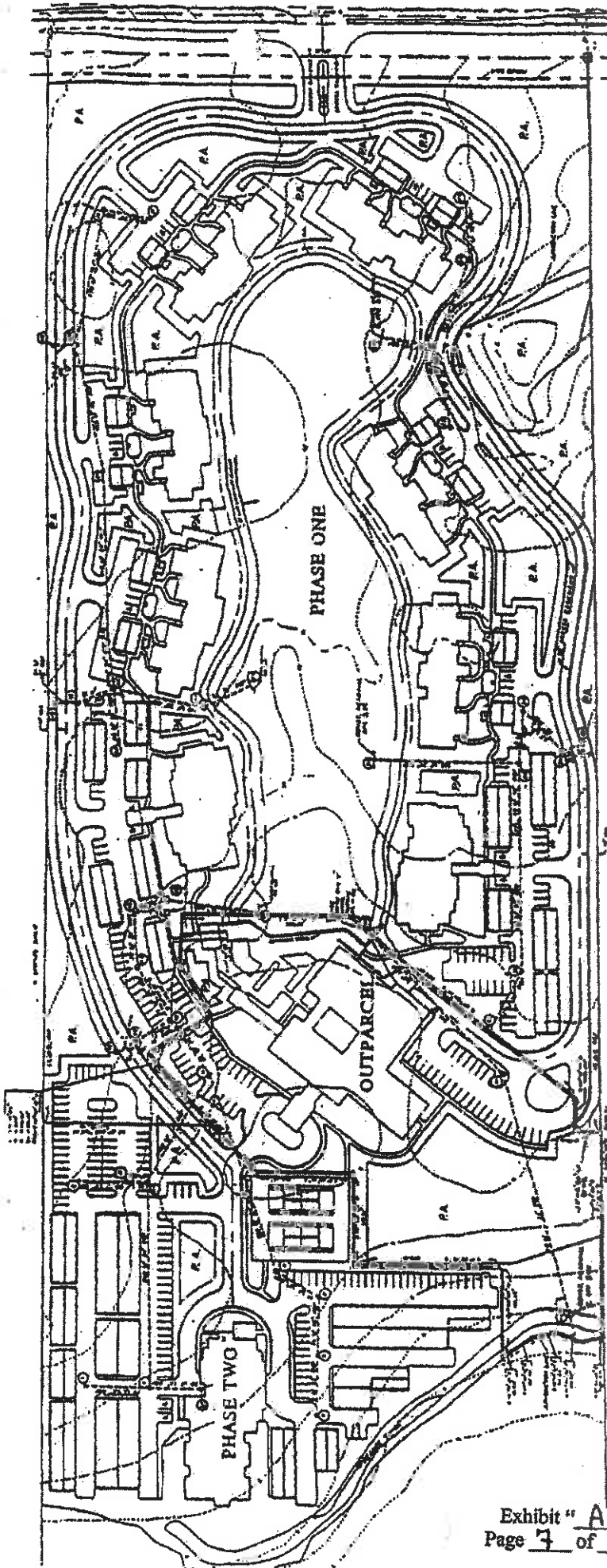
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thence S 21°28'22" W 28.39 feet;  
thence S 09°44'28" E 28.02 feet;  
thence N 88°24'30" E 254.64 feet to the Point  
of Beginning.

# ARBOR TRACE - SITE PLAN



## INFORMATIONAL NOTES:

1. P.A. = Preserve Area.
2. Phase One, Buildings 5 and 7 are under construction.
3. Phase Two is proposed.
4. All areas depicted in Phase One, other than parking spaces and garages, are common elements.
5. Access easement is also for the benefit of Phase Two parcel and Outparcel.

FILED

ARTICLES OF AMENDED AND RESTATED  
ARTICLES OF INCORPORATION

2011 JUN 24 PM 4:13

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to the provision of Section 617, Florida Statutes, the undersigned corporation adopts the following Articles of Amended and Restated Articles of Incorporation.

FIRST: The name of the corporation is Arbor Trace Condominium Association, Inc.

SECOND: The attached Second Amended and Restated Articles of Incorporation were adopted by the membership.

THIRD: The attached Second Amended and Restated Articles of Incorporation were adopted by the required vote of the members on the 20<sup>th</sup> day of April 2011.

FOURTH: The number of votes cast were sufficient for approval.

WITNESSES:  
(TWO)

ARBOR TRACE CONDOMINIUM  
ASSOCIATION, INC.

Sandra Steinbach

Signature

Sandra Steinbach

Printed Name

BY: Donald E Boulbee  
Donald Boulbee, President

Date: 6/17/11

(CORPORATE SEAL)

Gods Along

Signature

Gods Along

Printed Name

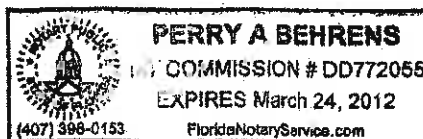
STATE OF Florida )  
COUNTY OF Collier ) SS:

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of June, 2011 by Donald Boulbee as President of Arbor Trace Condominium Association, Inc., a Florida Corporation, on behalf of the corporation. He is personally known to me or has produced (type of identification) \_\_\_\_\_ as identification.

Perry A Behrens  
Notary Public

Perry A Behrens  
Printed Name

My commission expires: 3/24/12



**SECOND AMENDED AND RESTATED**  
**ARTICLES OF INCORPORATION**  
**OF**  
**ARBOR TRACE CONDOMINIUM ASSOCIATION, INC.**

These are the Second Amended and Restated Articles of Incorporation for Arbor Trace Condominium Association, Inc. originally filed with the Florida Department of State the 2<sup>nd</sup> day of July, 1991, under Charter Number N44157. Matters of only historical interest have been omitted. Amendments included have been added pursuant to Chapter 617, Florida Statutes (2010).

1. **NAME.** The name of the corporation is ARBOR TRACE CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association," the Declaration of Condominium as "Declaration," these Articles of Incorporation as the "Articles," and the Bylaws of the Association as the "Bylaws."
2. **PURPOSE.** The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of that certain condominium located in Collier County, Florida, and known as Arbor Trace, A Condominium (the "Condominium").
3. **DEFINITIONS.** The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration and the Act, unless herein provided to the contrary, or unless the context otherwise requires.
4. **POWERS.** The powers of the Association shall include the following:
  - 4.1 **General.** The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of the Declaration, these Articles or of the Act.
  - 4.2 **Enumeration.** The Association shall have all the powers and duties set forth in the Act except as limited by the Declaration, these Articles, and the Bylaws (all as amended from time to time), and all of the powers and duties reasonably necessary to operate the Condominium including but not limited to the power:
    - 4.2.1 To make and collect Assessments and other Charges against Members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
    - 4.2.2 To buy, own, operate, lease, sell, and trade both real and personal property as may be necessary or convenient in the administration of the Condominium.

Exhibit "B" to the Amended and Restated Declaration of Condominium  
(Second Amended and Restated Articles of Incorporation)

Page 1 of 4

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

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

4.2.5 To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety, and welfare of the Unit Owners.

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

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

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

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

4.2.10 To make contracts and incur liabilities, borrow money at such rates of interest as the Board may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, or income, including but not limited to Assessments.

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

**4.4 Distribution of income.** The Association shall make no distribution of income to its Members, Directors or Officers.

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

**5. MEMBERS.** The Members of the Association shall consist of all of the record Owners of Units in the Condominium, and after termination of the Condominium shall consist of those who were Members at the time of the termination and their successors and assigns.

Exhibit "B" to the Amended and Restated Declaration of Condominium  
(Second Amended and Restated Articles of Incorporation)

Page 2 of 4

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

**5.2 Voting.** On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by the Bylaws. Any person or entity owning more than one Unit shall be entitled to one vote for each Unit owned. Those Members whose voting rights are suspended pursuant to the terms of the Condominium Documents and/or Florida Law shall not be entitled to cast the vote assigned to the Unit for which the suspension was levied during the period of suspension.

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

**6. TERM OF EXISTENCE.** The Association shall have perpetual existence.

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

**8. DIRECTORS.**

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

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

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

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

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

Exhibit "B" to the Amended and Restated Declaration of Condominium  
(Second Amended and Restated Articles of Incorporation)

Page 3 of 4

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

**10.2 Proposed Amendment Format.** Proposals to amend existing Articles of Incorporation shall contain the full text of the Article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF ARTICLE. SEE ARTICLE NUMBER \_\_\_ FOR PRESENT TEXT."

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

**10.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds ( $2/3^{\text{rds}}$ ) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds ( $2/3^{\text{rds}}$ ) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

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

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

**11. REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT.** The registered office address and the name of the registered agent of the corporation shall be as determined by the Board of Directors from time to time.

ACTIVE: 2149011\_8

Exhibit "B" to the Amended and Restated Declaration of Condominium  
(Second Amended and Restated Articles of Incorporation)

Page 4 of 4

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
999 VANDERBILT BEACH ROAD • SUITE 501 • NAPLES, FL 34108  
TELEPHONE (239) 552-3200



**SECOND AMENDED AND RESTATED**

**BYLAWS**

**OF**

**ARBOR TRACE CONDOMINIUM ASSOCIATION, INC.**

**1. IDENTITY.** These are the Amended and Restated Bylaws (hereinafter "Bylaws") of Arbor Trace Condominium Association, Inc., a Florida not-for-profit Corporation formed for the purpose of administering Arbor Trace, A Condominium (hereinafter "the Condominium") which is located at Naples, Collier County, Florida, upon the lands described in the Declaration of Condominium. (The corporation may hereafter be referred to as the "Association.")

**1.1 Office.** The office of the Association shall be at 1000 Arbor Lake Drive, Naples, Florida, or such other location within Collier County, as may from time to time be determined by the Board of Directors.

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

**1.3 Seal.** The corporate seal of the Association shall be adopted and may be changed by the Board of Directors and shall bear the name or abbreviated name of the Association, the word "Florida," the year of establishment, and shall identify the Association as a not-for-profit corporation. A common seal may be used in lieu of a raised corporate seal and in no event shall a seal be required to validate corporate actions unless specifically required by law.

**1.4 Definitions.** All terms used in these Bylaws shall have the same meaning, to the extent applicable, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium and the Florida Condominium Act (Chapter 718, Florida Statutes, 2010), all as amended from time to time.

**2. MEMBERS' MEETINGS.**

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

**2.2 Special Meetings.** Special Members' meetings shall be held whenever called by the President or by a majority of the Board of Directors, and shall be called by the President or Secretary within a reasonable time of receipt of written notice from 25% of the Voting Interests of the Association. Members' meetings to recall a Member or Members of the Board of Directors may be called by 10% of the Voting Interests of the Association who shall give notice

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of the meeting, stating the purpose of the meeting, pursuant to Section 718.112(2)(k), Florida Statutes (2010), as amended from time to time.

**2.3 Notice of Members' Meetings.** Notice of all Members' meetings, stating the time, place, and purpose(s) of the meeting, shall be sent to each Unit Owner by United States regular mail, unless waived in writing, at least 14 days prior to the meeting as to annual meetings and 10 days as to special meetings. Hand delivery and electronic notice is acceptable where permissible by law. Officers required to give notice may delegate the actual giving of notice to another person, such as an Assistant Officer or managing agent. Any Members' meeting or election at which one or more Directors are to be elected must be noticed as provided for in Section 2.4 next following. An Officer of the Association or other person providing notice shall execute an affidavit of mailing per Section 718.112(2)(d)(2), Florida Statutes (2010), as amended from time to time, which shall be retained in the official records of the Association as proof of such mailing. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda shall be posted at a conspicuous location, designated by Board resolution, on the Condominium Property at least 14 days in advance of the meeting.

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

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

**2.4.1** Not less than 60 days before a scheduled election, the Association shall mail, or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Unit Owner entitled to vote, a first notice of the date of the election. Any person desiring to be a candidate for the Board of Directors shall give written notice to the Association not less than 40 days before scheduled election. Not less than 14 days before the election, the Association shall mail or deliver a second notice of the election to all Unit Owners entitled to vote therein, together with a written ballot which shall include an information sheet (if provided by the candidate), no larger than 8½ inches by 11 inches furnished by the candidate, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.

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

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

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

**2.5 Quorum/Voting.** A quorum at Members' meetings shall consist of one-third (1/3) of the Voting Interests entitled to vote. Those Members whose voting rights are suspended pursuant to the terms of the Condominium Documents and/or Florida Law shall be excluded from any calculation for purposes of determining whether a quorum is present during the period of suspension. Decisions made by a majority of the Voting Interests present and voting, in person or by proxy, at a meeting at which a quorum is present shall be binding and sufficient for all purposes except such decisions as may be required by Chapter 718, Florida Statutes (2010) or the Condominium Documents require a larger percentage in which case the percentage required in Chapter 718, Florida Statutes (2010), or the Condominium Documents shall govern. To the extent lawful, Unit Owners may join in any action taken at a meeting of the Members through written approval of such action executed after the meeting, and such approval shall be as though the Unit Owner duly approved the action of the meeting in question.

**2.5.1 Units Owned by Association.** No Voting Interest or consent right allocated to a Unit owned by the Association shall be exercised or considered for any purpose, whether for a quorum, an election or otherwise, as provided in Section 718.112(2)(b)2., Florida Statutes (2010), as amended from time to time.

**2.6 Indivisible Vote.** Each Unit shall have one indivisible vote. If a Unit is owned by multiple individuals, such as a husband and wife, any record Owner may vote on behalf of the Unit. If a Unit is owned by a corporation, any officer may vote on behalf of said corporation. If a Unit is owned by a partnership, any general partner may vote on behalf of the partnership. If a Unit is owned in trust, any trustee of a trust shall be entitled to vote. If a Unit is owned by a limited liability company, any Member or manager may vote on behalf of the limited liability company. Any person with apparent authority asserting the right to vote on behalf of a Unit owned by an artificial entity shall be conclusively presumed to be entitled to vote on behalf of said Unit, unless the Unit has filed voting instructions with the Association designating some other person entitled to vote. If multiple Owners or non-individual Owners of a Unit cannot agree on a vote, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Unit where the voting rights assigned to the Unit are suspended pursuant to the terms of the Condominium Documents and/or Florida Law.

**2.7 Voting/Proxies.** Votes may be cast in person or by proxy. Members and proxyholders may participate in Association meetings via telephone conference, if permitted by

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the Association. Absent a resolution of the Board to the contrary, the President of the Association shall have the authority to determine whether Members or holders of proxies should be allowed to participate in any particular meeting of the Membership by telephonic conference. In order for a proxyholder to participate telephonically in an Association meeting, a copy of the proxy must be provided to the Association, at the meeting location, prior to the start of the meeting. Only Members or the spouse of a Member may be delegated to hold proxies, provided that the Board may designate agents of the Association (including but not limited to association legal counsel or the association's manager) as an eligible proxyholder. Proxies shall be in writing, signed and dated, and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Association before or at the voter registration immediately preceding the meeting, or adjournment thereof. Except as specifically otherwise provided by law, Members may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the Division of Florida Condominiums, Timeshares and Mobile Homes. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes regarding reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or Bylaws; and for any other matter which Chapter 718, Florida Statutes (2010) requires or permits a vote of the Members. To the extent permissible by law, it is the intent of these Bylaws that Members who are given the opportunity to vote by limited proxy, but decline to do so, may grant general powers (including the right to vote with respect to designated agenda items) to the holder of their proxy. No proxy, limited or general, shall be used in the election of Board Members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. A photographic, photostatic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

**2.8 No Quorum.** If any meeting of Members cannot be organized because a quorum is not present, or if insufficient Voting Interests are represented to approve a proposed item of Association business, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present or enough votes can be cast to decide a question.

**2.9 Order of Business.** The order of business at annual Members' meetings and, as far as applicable at all other Members' meetings, shall be:

**2.9.1** Call to order by the President;

**2.9.2** At the discretion of the President, appointment by the President of a chairman of the meeting (who need not be a Member or a Director);

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2.9.3 Appointment by the Chair of inspectors of election;

2.9.4 Election of Directors;

2.9.5 Calling of the roll, certifying of proxies and determination of a quorum; or, in lieu thereof, certification and acceptance of registration procedures establishing the number of persons present in person or by proxy;

2.9.6 Proof of notice of the meeting or waiver of notice;

2.9.7 Disposal of unapproved minutes;

2.9.8 Reports of Officers;

2.9.9 Reports of Committees;

2.9.10 Unfinished business;

2.9.11 New business;

2.9.12 Adjournment.

**2.10 Action Without a Meeting.** Anything to the contrary herein notwithstanding, to the extent lawful, any action required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice, and without a vote if a consent in writing setting forth the action so taken, shall be signed by the requisite number of Voting Interests to approve the action.

### **3. BOARD OF DIRECTORS.**

**3.1 Number, Term, and Qualifications.** The affairs of the Association shall be governed by a Board composed of five (5) Directors. All Directors shall be Members or the spouse of a Member. If provided in the Act as amended from time to time, co-owners of a Unit cannot simultaneously serve on the Board, except as permitted by the Act. When a Unit is owned by a corporation, a partnership, limited liability company, or similar entity, the Primary Occupant, as designated pursuant to the Declaration of Condominium, and the spouse of the Primary Occupant shall be eligible for Board membership. Trustees and beneficiaries of trusts (provided that the beneficiaries reside in the Unit), and the spouses of such persons, shall be considered eligible for Board membership. Persons who have been convicted of any felony in this State or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this State, are not eligible to serve on the Board, unless such felon's rights have been restored for a period of at least 5 years as of the date on which such person seeks election to the Board. A person who has

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been suspended or removed by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to Chapter 718, Florida Statutes, or who is more than 90 days delinquent in the payment of any fee, fine, or special or regular assessment is not eligible for Board membership. All Directors will be elected for a two (2) year term. It is the intention of these Bylaws that a staggered Directorate be maintained. To maintain a staggered Directorate, the Board may hold seats in future elections open for one or two year terms, when necessary or appropriate. In such cases, those receiving the higher number of votes shall be elected to the longer terms and when no election is held, the decision shall be made by agreement of the affected parties, or by lot. The term of each Director's service shall extend until their elected term is completed. Resignations of Directors are effective when received by the Association in writing, unless a later date is stated.

**3.2 Required Certification of Board Member.** Within 90 days after being elected to the board, each newly elected director shall certify in writing to the secretary of the association that he or she has read the association's declarations of covenants and restrictions, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, the newly elected director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider. Failure to timely file the written certification or educational certificate automatically disqualifies the director from service on the board. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election. Failure to have such written certification or educational certificate on file does not affect the validity of any appropriate action.

**3.3 Board Vacancies.** Vacancies in the Board of Directors shall be filled by appointment by a majority vote of the remaining Directors for the remainder of the unexpired term as provided in Article 3.1; provided that when a Director has been recalled by the membership, the vacancy created by his removal cannot be filled with the same person as has been removed from the Board, and when a majority of the Board has been recalled, vacancies shall be filled by the membership, as provided by law.

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

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

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

**3.7 Waiver of Notice.** Any Director may waive notice of a meeting before, at, or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall constitute waiver of notice of the meeting.

**3.8 Notice to Owners of Board Meetings.** Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously as provided in Section 2.3 of these Bylaws at least 48 continuous hours in advance of the meeting for the attention of Unit Owners, except in an emergency. If closed circuit television is available, the Board may use same for posting notices, as permitted by law. Meetings at which a regular monthly or quarterly Assessment or Special Assessment is to be considered shall specially state that Assessments will be considered and the nature, estimated cost, and description of the purpose for such Assessments. However, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding Unit use will be considered, or where the Board will establish the deductible feature of the Association's insurance policies, shall be mailed or delivered (including electronic delivery as provided by law) to the Unit Owners and posted conspicuously as provided in Section 2.3 of these Bylaws not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the person giving notice, where required by law, and shall be filed among the official records of the Association.

**3.9 Owner Participation in Board Meetings.** Meetings of the Board of Directors at which a majority of the Board Members are present, shall be open to all Unit Owners. Unit Owners may not designate third persons, through power of attorney or otherwise, to attend Board meetings, unless agreed to otherwise by the Board. The Unit Owner's right to attend Board meetings includes the right to speak with reference to all designated agenda items; provided, however, the Board may adopt reasonable rules governing the frequency, duration, and manner of Unit Owner statements. Unless otherwise provided by the Board, each Unit Owner is entitled to speak for three minutes with reference to designated agenda items. Board meetings subject to the attorney-client privilege shall not be subject to Unit Owner attendance.

**3.10 Board Meetings, Quorum, and Voting.** The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested, in writing, by two Board Members, and where required due to petition from twenty percent (20%) of the Voting

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Interests. A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of the Board of Directors present and voting at a meeting shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings (except that Directors may vote by secret ballot when electing Officers) and a vote or abstention for each Member present shall be recorded in the minutes. A Director of the Association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. If at any meeting of the Board there be less than a quorum present, the Director(s) present may adjourn the meeting from time to time until a quorum is present and no further notice need be given except for announcement at the meeting as to the date, time, and place of the adjournment. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum or counted as official vote for the Board's meeting. Directors may participate telephonically in Board meetings, as provided by law.

**3.11 Presiding Officer.** The presiding Officer at Directors' meetings shall be the President, and in his absence, the Vice President. In the absence of the presiding Officer, the Directors present shall designate one of their number to preside.

**3.12 Director Compensation.** Directors shall serve without pay but shall be entitled to reimbursement for expenses reasonably incurred.

**4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS.** All of the powers and duties of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, the Condominium Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees, when said powers and duties have been delegated by the Board, subject only to the approval by Unit Owners when such is specifically required. The powers of the Directors shall include, but shall not be limited to, the power:

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

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

**4.3 To Maintain The Condominium Property.** The Directors shall maintain, repair, replace, and operate the property within the Condominium.

**4.4 To Adopt Regulations.** The Directors shall enact and may amend Rules and Regulations concerning the transfer, use, appearance, maintenance, and occupancy of the Units, Common Elements, Limited Common Elements, and Association Property, and to enact rules,

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policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration of Condominium.

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

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

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

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

**4.9 To Insure.** The Directors shall carry insurance for the protection of the Unit Owners and the Association, pursuant to requirements contained in the Declaration of Condominium and Chapter 718, Florida Statutes (2010), both as amended from time to time.

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

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

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

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

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

**4.15 To Levy Fines.** The Directors may, pursuant to Section 718.303, Florida Statutes (2010), impose fines against a Unit not to exceed the maximum permissible by law, for failure to comply with the provisions of the Board policies and resolutions, the Condominium Documents, including the Rules and Regulations, and applicable laws by Unit Owners, their Families, Occupants, Tenants, and Invitees.

**4.15.1** A fine may be imposed for each day of continuing violation at the highest rate allowed by law per violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed the maximum amount permissible by law.

**4.15.2** The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing by being given notice of not less than twenty (20) days. Notice shall be effective when mailed by United States Mail, certified, return receipt requested, to the address of the Unit Owner listed in the official records of the Association, and as to Tenants, to the mailing address for the Unit. Said notice shall include:

- (a) A statement of the date, time, and place of the hearing;
- (b) A statement of the provisions of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, Board policies and resolutions, or laws which have allegedly been violated; and,
- (c) A short and plain statement of the matters asserted by the Association.

**4.15.3** The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material

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considered by the Association. The hearing shall be held before a Committee of Unit Owners appointed by the Board, which may not include Board Members nor persons residing in a Board Member's household. If the Committee does not agree with the fine, the fine may not be levied. Should the Association be required to initiate legal proceedings to collect a duly levied fine, the prevailing party in an action to collect said fine shall be entitled to an award of costs, and a reasonable attorney's fee incurred before trial (including in connection with the preparation for and conduct of fining hearings), at trial, and on appeal. Unit Owners shall be jointly and severally liable for the payment of fines levied against Tenants, Guests, Invitees, or other Occupants of a Unit.

**4.16 To Appoint Committees.** The Directors may appoint Committees and delegate to such Committees those powers and duties of the Association as the Board deems advisable. All Committees and Committee Members shall serve at the pleasure of the Board. Committees of the Association as defined in Section 718.103(7), Florida Statutes (2010), as amended from time to time, shall conduct their affairs in the same manner as provided in these Bylaws for Board of Director meetings. All other Committees may meet and conduct their affairs in private without prior notice or Owner participation, unless otherwise directed by the Board of Directors.

**4.17 To Ensure Fire Safety Compliance.** The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the condominium Units with the applicable Fire and Life Safety Code.

**4.18 To Approve the Installation of Hurricane Shutters.** The Directors shall adopt hurricane shutter specifications for the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code, or shall be structured to ensure that installed shutters are in compliance with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board, provided that the Board may condition approval upon the Unit Owner's agreement to execute appropriate documentation regarding same.

**4.19 To Exercise Emergency Powers.** In the event of any "emergency" as defined in Paragraph 4.19.10 below, the Board of Directors may exercise the emergency powers described in this Section, and any other emergency powers authorized by Section 617.0207, Florida Statutes (2010), Section 617.0303, Florida Statutes (2010), and Section 718.1265, Florida Statutes (2010), all as amended from time to time.

**4.19.1** 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.

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**4.19.2** The Board may relocate the principal office or designate alternative principal offices or authorize the Officers to do so.

**4.19.3** 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.

**4.19.4** The Board may change or postpone the annual meeting date to a date and time determined by the Board, even if such change will result in not holding an annual meeting in a particular calendar year, as long as the annual meeting is held no more than eighteen (18) months after the prior annual meeting date.

**4.19.5** 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.

**4.19.6** The Board may use reserve funds to meet Association needs, and may use reserve funds as collateral for Association loans. By adoption of this provision, the owners specifically authorize the Board to use reserve funds for nonscheduled purposes in the event of an emergency pursuant to Section 718.112(2)(f)3., Florida Statutes (2010), as may be amended from time to time. The Board may adopt emergency assessments with such notice deemed practicable by the Board.

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

**4.19.8** 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.

**4.19.9** These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

**4.19.10** 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:

**4.19.10.1** a state of emergency declared by local civil or law enforcement authorities;

**4.19.10.2** a hurricane warning;

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**4.19.10.3** a partial or complete evacuation order;

**4.19.10.4** federal or state "disaster area" status;

**4.19.10.5** 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; or,

**4.19.10.6** an unanticipated set of circumstances, which, if not acted upon with immediacy, is likely to cause imminent and significant financial harm to the Association, the Unit Owners, the Condominium Property, or Association Property.

**4.20 To Enter Into Contracts and Borrow Money.** The Directors may make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, or income.

## **5. OFFICERS.**

**5.1 Executive Officers.** The executive Officers of the Association shall be the President, one or more Vice Presidents, a Secretary, a Treasurer, and such Assistant Officers as may be desired, all of whom shall be elected annually by and from the Board of Directors, and who may be preemptorily removed by a majority vote of the Directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary. Assistant Officers need not be Directors.

**5.2 President — Powers and Duties.** The President shall be the Chief Executive Officer of the Association, shall preside at all meetings of the Board of Directors and Association meetings. The President shall have general supervision over the affairs of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

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

**5.4 Secretary — Powers and Duties.** The Secretary shall keep the minutes of all proceedings of the Directors and the Members. He shall attend to the giving and serving of all notices to the Members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep and have custody of the records of the Association, except those of the

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Treasurer. He shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

**5.5 Treasurer — Powers and Duties.** The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the Assessment rolls and accounts of the Members. He shall keep the books of the Association in accordance with good accounting practices and shall perform all other duties incident to the office of the Treasurer of a corporation.

**5.6 Officers' Compensation.** Officers shall not be entitled to compensation for service as such, but shall be entitled to reimbursement of expenses reasonably incurred. This provision shall not preclude the Board of Directors from employing an Officer or Director as an agent or employee of the Association.

## **6. INDEMNIFICATION.**

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

**6.2 Defense.** To the extent that a Director, Officer, or Committee Member of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section 6.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

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**6.3 Advances.** Reasonable expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or Committee Member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 6.

**6.4 Miscellaneous.** The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or Committee Member and shall inure to the benefit of the heirs and personal representatives of such person.

**6.5 Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee, or agent of the Association, or a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the duty to indemnify him against such liability under the provisions of this Article.

**6.6 Amendment.** Anything to the contrary herein notwithstanding, the provisions of this Article 6 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

**7. MINUTES AND INSPECTION OF RECORDS.** Minutes of all meetings of Unit Owners and of the Board of Directors shall be kept in a business-like manner. These, plus records of all receipts and expenditures and all other official records, as defined in Section 718.111(12), Florida Statutes (2010), as amended from time to time, shall be available for inspection by Unit Owners and Board members at all reasonable times. Provided, however, that the Directors may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and any copying.

## **8. FISCAL MANAGEMENT.**

**8.1 Budget.** The budget shall be adopted by the Board. A proposed annual budget of Common Expenses and anticipated revenues shall be prepared by the Board of Directors which shall include all anticipated income/revenue and expenses for operation, maintenance, and administration of the Condominium. The proposed budget may also include expenses of security, in-house communications, Directors and Officers insurance, transportation services, bulk cable or master antenna television, and interior pest control, all of which are declared to be Common Expenses under these Bylaws. The proposed budget shall include reserves per Section 718.112(2)(f)2, Florida Statutes (2010), as amended from time to time, the funding of which may

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be waived or reduced vote of a majority of the Voting Interests present (in person or by proxy) and voting at a duly noticed meeting of the Association, or by written agreement of a majority of the entire Voting Interests. Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the Voting Interests present (in person or by proxy) and voting at a duly called meeting of the Association, or by the written approval of a majority of the entire Voting Interests. The budget may contain a reasonable allowance for contingencies and provide funds for all operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year, provided that notice of the Board meeting at which the revised budget will be considered along with a copy of the proposed revisions to the budget shall be mailed to each Member as provided in Article 8.2 hereof.

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

**8.2 Mailing and Posting.** A copy of the proposed annual budget shall be mailed or hand-delivered to the Unit Owners not less than 14 days prior to the meeting of the Directors at which the budget will be adopted together with a notice of the meeting. The notice shall also be posted in a conspicuous location on the Condominium Property as provided by law. The Board may include notice of its meeting to set the insurance deductible with notice of the budget meeting.

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**8.3 Assessments.** The annual shares of the Unit Owners of the Common Expenses shall be made payable in installments due monthly or quarterly (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent 10 days thereafter. No invoice need be sent by the Association, although the Association may do so. The Association shall have the right to accelerate Assessments of an Owner delinquent in the payment of Common Expenses. Accelerated Assessments shall be due and payable on the date a claim of lien is filed and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

**8.4 Special Assessments.** Special Assessments for Common Expenses which are not funded through the budget may be made by the Board of Directors, and the time of payment shall likewise be determined by them. Notice of the Board meeting at which such Assessments shall be considered shall be posted and mailed to each Unit Owner as provided in Article 3.7 hereof, except in the event of an emergency. The funds collected pursuant to a Special Assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Unit Owners or applied as a credit towards future Assessments.

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

**8.6 Liability for Assessments and Charges.** A Unit Owner shall be liable for all Assessments and Charges coming due while the Owner of a Unit, and such Owner and Owner's grantees or successors after a conveyance or other transfer of title shall be jointly and severally liable for all unpaid Assessments and Charges due and payable up to the time of such voluntary conveyance. Liability may not be avoided by waiver of the use or enjoyment of any Common Elements or Association Property or by abandonment of the Unit for which the Assessments or Charges are due. Where a mortgagee holding a first mortgage of record obtains title to a Unit by foreclosure, such mortgagee and its successors and assigns shall only be liable for such Unit's Assessments, or share of the Common Expenses which became due prior to acquisition of title as provided in the Florida Condominium Act (2010), as amended from time to time.

**8.7 Liens for Assessments.** The unpaid portion of an Assessment, including an accelerated Assessment which is due, together with all costs, collection expenses, interest, late fees, and reasonable attorney's fees for collection, including appeals, shall be secured by a continuing lien upon the Unit.

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**8.8 Lien for Charges.** Unpaid Charges due to the Association together with costs, interest, late fees, expenses and reasonable attorney's fees shall be secured by a common law and contractual lien upon the Unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association.

**8.9 Collection — Interest; Administrative Late Fee; Application of Payments.** Assessments or Charges paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten (10) days shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25 or 5% of each installment of the Assessment for which payment is received more than ten (10) days after the due date, or the maximum late fee permissible by law. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. All payments upon account shall be first applied to interest, then the late fee, then to any costs and collection expenses and reasonable attorney's fees incurred, and then to the Assessment payment first due.

Except as otherwise provided in the Florida Condominium Act (2010), no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4), Florida Statutes (2010), as amended from time to time.

**8.10 Collection — Suit.** The Association, at its option, may enforce collection of delinquent Assessments or Charges by suit at law, by foreclosure of the lien securing the Assessments or Charges, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment, or decree, together with those which have become due by acceleration or which have thereafter become due, plus interest thereon, and all costs and expenses incident to the collection and the proceedings, including reasonable attorney's fees, incurred before trial, at trial, and on appeal. The Association may attach rental income for delinquent Units and may withhold approval for the sale, Lease, or other transfer of a Unit, or any interest therein, until all past due Assessments, interest, late fees, costs, and attorney's fees have been paid in full. The Association must deliver or mail by certified mail to the Unit Owner written notices of its intention to file a lien and to foreclose the lien, as provided by law.

**8.11 Association Depository.** The Depository of the Association in which the funds of the Association shall be deposited, shall be financial institutions authorized to do business in Florida which carry FDIC insurance or equivalent private insurance, provided that such insurance is backed by the full faith and credit of the United States of America. Alternatively, the Association may deposit funds with brokerage houses or institutions which are members of the National Association of Securities Dealers, Inc. and insured by industry insurance backed by the full faith and credit of the United States of America. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of

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money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors.

**8.12 Commingling of Funds.** All funds of the Association shall be maintained separately in the Association's name. No community association manager or business entity required to be licensed or registered under Section 468.432, Florida Statutes (2010), as amended from time to time, no agent, employee, Officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in Section 468.431, Florida Statutes (2010), as amended from time to time, or with those of any other entity. Reserve funds and operating funds of the Association may be commingled for investment purposes, as provided by law.

**8.13 Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with Rule 61B-22, Florida Administrative Code (2010), as amended from time to time, and with Section 718.111(13), Florida Statutes (2010), as amended from time to time.

**8.14 Fidelity Bonding.** The Association shall obtain and maintain adequate fidelity bonding in the minimum principal sum set forth in the Act, for each person (whether or not a Director) who controls or disburses Association funds, and the President, Secretary and Treasurer. The Association shall bear the cost of bonding of Directors and Officers. In the case of a community association manager or management firm, the cost of bonding may be allocated as the parties may agree. All persons providing management services to the Association, or otherwise having the authority to control or disburse Association funds, shall provide the Association with a certificate of insurance evidencing compliance with this paragraph, naming the Association as an insured under said policy.

**9. PARLIAMENTARY RULES.** Robert's Rules of Order (latest edition) shall be used as a guide in the conduct of Members' meetings, Board meetings, and Committee meetings to ensure fairness, impartiality, and respect for minority views without unduly burdening majority rights. Meetings shall also be conducted in accordance with these Bylaws and the procedures established by the Board from time to time, including the form of voting documents to be used. The ruling of the Chair of the meetings unless he or the Board of Directors designates a third person, as Parliamentarian, shall be binding on all matters of procedure, unless contrary to law.

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

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

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**10.2 Proposed Amendment Format.** Proposals to amend existing Bylaws shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF BYLAWS. SEE BYLAW NUMBER \_\_\_ FOR PRESENT TEXT."

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

**10.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3<sup>rds</sup>) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds (2/3<sup>rds</sup>) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

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

**10.6 Automatic Amendment.** These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium or the Articles of Incorporation. Whenever Chapter 718, Florida Statutes (2010) Chapter 617, Florida Statutes (2010), or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Bylaws, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors without a vote of the Owners, may adopt by majority vote, amendments to these Bylaws as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2010), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

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

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## 11. DISPUTE RESOLUTION.

**11.1 Mandatory Arbitration.** If unresolved, disputes between the Board and Unit Owners as defined in Section 718.1255(1), Florida Statutes (2010), as amended from time to time, must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation, so long as the Condominium Act requires such arbitration.

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

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

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

**12.1 Conflicts.** The term "Condominium Documents," as used in these Bylaws and elsewhere shall include the Declaration of Condominium, Articles of Incorporation, these Bylaws, the Rules and Regulations of the Association, the Plats, Surveys, Plot Plans, and graphic descriptions of improvements of record, and all other exhibits to the original Declaration of Condominium. In the event of a conflict between the language in the Declaration of Condominium and the graphic descriptions of record, the graphic description of record shall control. In the event of a conflict between language in any of the other Condominium Documents, the following priorities shall control:

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1. Declaration of Condominium;
2. Articles of Incorporation;
3. Bylaws; and,
4. Rules and Regulations.

**12.2 Gender.** The use of the term "he," "she," "his," "hers," "their," "theirs" and all other similar pronouns should be construed to include all genders and encompass the plural as well as the singular.

**12.3 Severability.** In the event that any provisions of these Bylaws is deemed invalid, the remaining provisions shall be deemed in full force and effect.

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**AMENDED AND RESTATED RULES AND REGULATIONS OF THE  
ARBOR TRACE CONDOMINIUM ASSOCIATION, INC. AS OF NOVEMBER 19, 2014**

**I. USE RESTRICTIONS**

**1. GENERAL HOUSE RULES**

**1.1** Common Elements shall not be obstructed, littered, defaced, altered or misused in any manner. Common Elements are defined as those portions of the Condominium Property owned by all Unit Owners, including all areas not located within the defined boundaries of the individual Unit.

**1.2** Unit Owners are not permitted to make alterations or modifications to their Unit without the express written consent of the Association. A "Request to Modify" form must be submitted to the Association describing the proposed alteration or modification, the name of the licensed contractor doing the work and contractor's proof of worker's compensation and liability insurance.

**1.3** Alteration, addition or removal of landscape plantings outside a Unit or on any portion of the Common Elements is not permitted, with the exception of annual flowers, which may be planted with Association approval.

**1.4** The total number of Residents and guests permitted overnight may not exceed four in a one-bedroom Unit, six in a two-bedroom Unit, or eight in a three-bedroom Unit. Children under the age of 12 years must be supervised at all times.

**1.5** A total of two licensed motor vehicles per Unit are allowed to be permanently parked on the premises. One of which, must be parked in the Unit Owners designated carport or garage. Second vehicles must be parked in the lot closest to the Clubhouse. Boats, trailers or recreational vehicles are not permitted to be parked on the premises overnight.

**1.6** Garage doors must be kept closed when not in use and closed immediately after entering or exiting.

**1.7** Furniture, fixtures or other personal items should not be placed on the lawn or any portion of the Common Elements as to inhibit proper maintenance of the property.

**1.8** Furniture, fixtures, plants or other personal items should not be left on patios, terraces, lanais or balconies if the Unit Owner is away for an extended period, unless the lanai, terrace or balcony can be completely enclosed or secured by hurricane shutters.

**1.9** Beach towels, bathing suits, other clothing should not be hung or otherwise displayed on lanais, terraces or balconies.

**1.10** Pet owners must keep dogs on a leash at all times when outside of the Unit. Pet owners must carry the necessary supplies to clean up droppings from their pets and dispose of same in a proper garbage receptacle. A recycle bin is not a proper garbage receptacle. The term “Pet Owner” also applies to those visiting the community with pets. Visitors with pets must comply with Section 14.6 of the Declaration of Condominium, the same as Unit Owners. Specifically, the number of pets allowed, which is two (2), including any pets already residing in the Unit and the size restrictions, which may not exceed twenty (20) inches in height, measured from the shoulder, or thirty (30) pounds in weight.

**1.11** Outdoor cooking is not permitted on terraces, lanais or balconies.

**1.12** Residents or their guests should not feed the wildlife, as they will lose their fear of humans and become a nuisance or a danger to Residents and their pets.

**1.13** Open Houses for Real Estate sales or Estate sales are strictly forbidden. No signage of any type is allowed to be placed on the roadways or at the front entry on Vanderbilt Drive to promote any type of sale or event. For Sale signs for individual residential Units may be placed in the window of any individual Unit provided they conform to the size limits approved by Collier County.

**1.14** Moving vans and large commercial vehicles needing access to the community should be advised of the size limitations of our front gate. Trucks with sleeper cabs or 53-foot trailers are too large to fit through the front gate. Moving companies should be directed to contact the Club Office at 598-2929, prior to scheduling any pick-up or delivery.

**1.15** Contractors and service personnel are asked to confine their work in the community from 8:00 am to 5:00 pm, Monday through Friday and from 8:00 am to 12:00 noon on Saturday. Sunday work is prohibited. Contractors will be permitted to unload materials and equipment outside the entrances, depending on Unit locations. After unloading, contractors must park their vehicles away from the building.

**1.16** Work preparations will not be allowed in or around parking structures or in building common areas (i.e. mixing of paints, mud, grout, etc.) Grout, paint, wall mud or any other material may not be poured down drains, sinks, toilets or bathtubs. Sprinkler heads, smoke or fire alarms are not to be disturbed and must be properly protected during interior work such as sanding and painting.



**1.17** Household garbage must be bagged in plastic, tied securely and placed in the green trash receptacle in the trash containment area at each villa complex. Recycling materials must be kept separate from household garbage and placed in the yellow and green recycling containers provided at each building. The following items may be co-mingled in the designated recycling container: Newspapers, plastic containers, all glass bottles or jars, aluminum beverage cans and steel food cans, junk mail, paper envelopes, magazines, office paper, phone books and brown paper bags. Cardboard boxes should be flattened and placed in the trash containment area at your villa. (See mid-rise rules for mid-rise instructions).

**1.18 Unit Owner Responsibilities Regarding the Prevention of Fungal Contaminants (Mold and Mildew).** The Unit Owners must take all appropriate steps to reduce and/or eliminate the occurrence or continued existence of mold and/or mildew (collectively "mold") growth in and around the Unit and appurtenant Common Elements and thereby minimize the possibility of adverse effects that may be caused by funguses, including mold. The Unit Owners' responsibilities include, but are not limited to, the following:

- The air conditioning system, and humidity control system if applicable, must be kept in good and working order. Whether occupied or not, the air conditioning system, and humidity control system if applicable, must be appropriately operated, when reasonably necessary, to adequately control the temperature, humidity and in-door air quality in the Unit.
- The main valve on the water line serving the Unit must be turned to the OFF position if the Unit is to be unoccupied for more than seven (7) consecutive days.
- All incidents of mold and water intrusion, including but not limited to: water spots on drywall, plumbing leaks, leaks around windows and doors, leaks from appliances, and any other leaks, or evidence of water intrusion must be immediately reported to the Association.
- All regular and routine maintenance required to prevent water intrusion, and which is the obligation of the Unit Owner, must be timely and adequately performed. Such maintenance includes, but is not limited to: the regular inspection, cleaning and services of all appliances servicing the Unit, including the air conditioning system, humidity control system if applicable, refrigerators, and freezers; the regular maintenance and replacement of interior caulking and/or weather stripping around windows, doors, and plumbing fixtures.

## **2. GENERAL RULES FOR MID-RISE UNITS**

**2.1** Parking areas marked "Residents and Visitors" are not to be used for long term Unit Owner parking. This includes the Handicap parking spots located in the front of each mid-rise building. Unit Owners may use these parking areas for loading, unloading or temporary waiting for up to 30 minutes. Residents with second vehicles should park in the lot closest to the Clubhouse.

**2.2** The designated Social rooms on each floor are not to be used for storage of personal belongings. Items such as card tables and chairs or exercise equipment are permitted. Other suitable furniture may be donated subject to Association approval.

**2.3** Luggage carriers are available for Unit Owner's use and are stored in the first floor Social Room. Luggage carriers should be returned promptly after use.

**2.4** Smoking is not permitted in any of the common areas of the building.

**2.5** Proper attire is required at all times when in the common areas of the building. Cover-ups and proper footwear are required when going to and from the pool area.

**2.6** Unit Owners must notify the Club office at 598-2929 of any planned moving, delivery of large furniture or household appliances. Maintenance staff must pad the elevators to avoid any damage.

**2.7** Household garbage should be bagged in plastic, tied securely and dropped into the trash chutes at the end of each hallway. Cardboard boxes should be flattened and placed in the trash room on the first floor and maintenance staff must be notified for removal. Recycling materials must be kept separate from household garbage and placed in the appropriate green or brown recycling containers provided at the east end of the parking lot of each building. The following items may be placed in the appropriately marked recycling container: Newspapers, plastic containers, all glass bottles or jars, aluminum beverage cans and steel food cans, junk mail, paper envelopes, magazines, office paper, phone books and brown paper bags.

**2.8** Cage storage: all articles must be stored in you individual cage. Any articles (with exception of those for which permission was granted by the Association) not stored in a cage will be removed. No article should be placed above the cage.

**2.9** Lobby, Hallway and Social room: any furniture, fixture or artwork belonging to any resident must be clearly marked with the name and Unit number of the owner.

**2.10** Closet in social room: all articles must be marked with personal name or they will be removed. The board has granted permission to all Residents for the storage of emergency water during hurricane season.

### **3. RULES REGARDING USE OF NON-LICENSED VEHICLES**

**3.1** Arbor Trace Condominium is a condominium community designed for older persons, many of whom are infirm. It is expected that many Residents will require the use of various apparatus to assist them in their mobility. Such apparatus include, but would not necessarily be limited to: manual and electrical wheelchairs, two and three-wheeled bicycles, and electrical three or four-wheeled vehicles (e.g. "scooters"). Golf Carts are not permitted for resident use on the property. All such apparatus are hereinafter collectively referred to as "non-licensed" vehicles. Residents are permitted to use non-licensed vehicles on the Condominium Property for the purpose of access to the Service Facility, access to other apartments and Common Elements within the Condominium, and such other uses as are customary and reasonable as determined by the Board of Directors. The right to use such non-licensed vehicles is, however, conditioned on the following:

- Non-licensed vehicles must be operated in a safe and responsible manner, with due consideration for the safety of other Residents and visitors.
- The Board of Directors may adopt regulations regarding the storage of non-licensed vehicles.
- No Resident (owner or tenant) may operate a non-licensed vehicle unless they have signed an appropriate "hold harmless" agreement, in the form prescribed by the Board of Directors.
- Only Residents (owners and tenants) may use non-licensed vehicles on the premises. Guests (particularly children) are specifically precluded from operation of non-licensed vehicles on the premises (excepting non-motorized bicycles, which may be used in a safe manner).

**3.2** The Board of Directors reserves the right to take such action as is appropriate to enforce this rule, including the suspension or revocation of permission to use a non-licensed vehicle on the Condominium Property. The Board may also levy fines against a Unit for violation of this rule pursuant to Section 718.303, Florida Statutes (2011) and Article 4.14 of the Association's Amended and Restated By-laws.

## **II. RULES AND REGULATIONS GOVERNING POSTING OF NOTICE**

Pursuant to Section 718.112(2)(c), Florida Statutes, the official location for posting notice of Association meetings is lobby bulletin boards on the first floor of buildings 2 and 9 and the bulletin board located in the dining room of the Clubhouse. Notice of meetings may also be broadcast on the in-house television channel 195.

**This does not preclude posting at other locations.**

### **III. RULES AND REGULATIONS GOVERNING HURRICANE SHUTTER INSTALLATIONS**

**A. *Definition.*** Hurricane Shutter shall mean any device, installation, equipment or appliance, whether permanently or temporarily affixed or attached in any manner to any portion of the exterior of the building or any portion of the building so as to be visible from the exterior of the building, used, either directly or indirectly, as its main purpose or incidental to its main purpose, as protection against storm damage, water penetration by driven rain or rising water, wind damage or damage from physical objects or projectiles carried by wind or storm.

**B. *General.*** Hurricane Shutters are prohibited, except as same may be approved by the Board in accordance with these Rules and Regulations.

**C. *Installation Requests***

1. Any person desiring a Hurricane Shutter shall submit a Request to Modify form to the Board (or Manager) for approval to install hurricane shutters, not less than thirty (30) days prior to the proposed commencement of installation. The written request shall contain (1) the name and address of the person desiring the Hurricane Shutter, (2) the Unit number to which the Hurricane Shutter will be installed, (3) the name, address, and telephone number of the proposed contractor who will install the Hurricane Shutter (together with the same information for any proposed subcontractors), (4) the proposed location for installation of the Hurricane Shutter, (5) the proposed type, style, brand, color, material and name and address of the manufacturer of the Hurricane Shutter, and (6) the proposed manner of installation of the Hurricane Shutter.

2. The written request required by paragraph 1 above shall be accompanied by a copy of (1) the occupational license and certificate of competency of the proposed contractor (and, if applicable, the subcontractor) who will install the Hurricane Shutter, and (2) the insurance certificate of the proposed contractor (and, if applicable, the subcontractor).

3. In the event the Board, in its sole discretion, determines it to be necessary to have the Association's engineer review the documentation supplied pursuant to paragraphs 1 and 2 above, for the purpose of determining whether the proposed Hurricane Shutter conforms to these Rules and Regulations and/or the applicable building codes, then the person requesting the installation of the Hurricane Shutter shall pay to the Association the estimated cost of such engineer's review within five (5) days of receipt of notice from the Board. Failure to pay the cost for the engineer's review within thirty (30) days subsequent to receipt of the Board's notice shall be deemed a withdrawal of the request for installation of the Hurricane Shutter. The Board shall be relieved from the requirement to approve or disapprove the proposed installation if said engineering fees are not paid.

4. Within thirty (30) days subsequent to receipt of the written request and accompanying documentation, pursuant to paragraphs 1 and 2 above, the Board shall either approve or disapprove the proposed installation of the Hurricane Shutter. For good cause, the Board may extend the time in which to approve or disapprove the proposed installation for a reasonable time, not to exceed an additional thirty (30) days (i.e. 60 days from date of receipt of written request and accompanying documentation). Good cause may include, but shall not be limited to, the engineer's inability to timely review the documentation. The Board shall send notice to the person requesting the proposed installation, whether the installation is approved or disapproved. In the event the Board shall disapprove the proposed installation, the notice shall state the basis for the disapproval. The Board may promulgate, and amend, from time to time, any forms it deems appropriate to convey its approval or disapproval of requests to install hurricane shutters.

5. In the event the Board approves the proposed installation, construction shall commence within sixty (60) days subsequent to receipt of the Board's notice of approval. Failure to commence construction within the specified time shall be deemed an abandonment of the installation, a withdrawal of the request for the proposed installation, a disapproval of the proposed installation, and the installation shall be prohibited. A person deemed to have abandoned the installation shall be required to submit another written request for a proposed installation in accordance with these Rules and Regulations.

***D. Maintenance and Owner Obligations.*** As a condition of approval, the owner of a Unit requesting installation of Hurricane Shutters shall be responsible for the insurance, maintenance, repair and replacement of the Hurricane Shutters.

***E. Contractor Requirements.***

1. No person (hereinafter Contractor) shall install, construct, affix, attach or place a Hurricane Shutter, unless such person is qualified to do so and holds an Occupational License to perform such installation from the governmental agencies having jurisdiction over such type of work within the County and/or appropriate governmental Unites) in which the Condominium is located and holds a Certificate of Competency from the State of Florida or other applicable governmental authority.

2. In addition to the requirements of paragraph 1 above, no Contractor shall install, construct, affix, attach or place any Hurricane Shutter, unless the Contractor shall obtain and maintain Public Liability Insurance, including completed operations, in an amount not less than \$300,000.00, per occurrence, Workers' Compensation Insurance in an amount not less than \$300,000.00, and Automobile Liability Insurance, including non-owned automobiles, in an amount not less than \$300,000.00, per occurrence.

Notwithstanding any minimum amount requirements, no insurance coverage shall be less than the minimum amount required by Law. Each such insurance policy shall, for the duration of the construction, name the Association and the person requesting the installation of the Hurricane Shutter as co-insureds.

**3.** All insurance policies shall contain a clause requiring thirty (30) days prior notification to the Association in the event such policy or bond is to be canceled, terminated or modified in any manner. No Contractor or proposed Hurricane Shutter shall be approved, unless and until the policies or certificates of insurance are received by the Board.

**F. Construction Lien Law.** No Hurricane Shutter shall be approved, unless the installation thereof complies with the Construction Lien Law, Chapter 713, Florida Statutes, as same may be amended or renumbered from time to time. The requesting Owner shall be fully responsible for compliance with such laws and, as a condition of approval, specifically agrees to indemnify the Association against any liens or other encumbrances occasioned by the installation.

**G. Completion of Construction.** Construction of the Hurricane Shutter shall be completed within thirty (30) days subsequent to the commencement of construction. Failure to complete construction within the specified time shall be deemed an abandonment of construction installation and a withdrawal of the request for the proposed installation, the installation construction shall be prohibited, and the proposed Hurricane Shutter shall be deemed disapproved.

**H. Operation of Hurricane Shutters.** Hurricane Shutters shall, at all times, whether open or closed, be fastened securely in place in accordance with manufacturer, building code and installation requirements.

**L. Liability.** The Owner of the Unit to which the Hurricane Shutter is installed shall be liable for any and all damage to the Condominium Property, Association property or the property of other Owners arising out of or concerning the construction, installation or maintenance of the Hurricane Shutter.

**J. Removal of Shutters.** The Owner agrees to be responsible for all costs of removal and reinstallation of the Hurricane Shutters, or any portion thereof, if necessary, to allow the Association to fulfill its maintenance, repair and replacement duties as set forth under the Declaration of Condominium and Chapter 718, Florida Statutes.

***K. Removal of Shutters.***

1. The Hurricane Shutter and the installation thereof, shall conform, in all respects, to the State Minimum Building Codes and the Building Codes of the governmental agencies having jurisdiction over the Hurricane Shutter installation in the Condominium.

2. The minimal and general specifications adopted by the Association, which shall be applicable to and binding upon all Hurricane Shutter installations are attached hereto as Exhibit "A" and incorporated herein.

***L. Authority of Association Officers and Agents.*** All references to "Board" or "Association" herein shall include authorized Officers and agents of the Association.

***M. Miscellaneous/Remedies.*** Any Unit Owner seeking approval for Hurricane Shutters shall sign an Application which agrees to comply with this Resolution (plus any Rules and Regulations of the Association) including the following:

1. Owner agrees to be responsible for all costs and expenses incurred in the installation, maintenance and continued first-class upkeep of the Hurricane Shutters.

2. Owner assumes all responsibility for procuring, buying and/or obtaining all necessary Building or Zoning Permits, variances and adherence to any and all other procedures outlined for the construction and maintenance of the improvements described herein by all City, Town, County, State or other governmental entities, including compliance, with current building codes.

3. Owner agrees to construct and maintain the Hurricane Shutters referred to herein in a first-class manner, and Association shall have the right, upon prior notice to Owner, to periodically inspect the shutters to verify compliance with this requirement. If Owner fails to maintain the hurricane shutters as required herein, after ten (10) days' written notice from Association to Owner, Association shall have the right to perform, or have performed, any required maintenance or repair work or to have the Hurricane Shutters removed and the property restored to its condition prior to the installation of the Hurricane Shutters. Owner hereby agrees to be personally responsible for all costs thus incurred and grants Association a lien right against the Unit referred to herein in order to secure payment of any such sums. Said lien shall bear interest and be collectable and foreclosable in the same manner as liens granted to the Association under the Declaration and Condominium Act for non-payment of Condominium Assessments.



4. Owner agrees to indemnify, defend and hold harmless the Association from any and all claims, actions, costs or expenses of any nature whatsoever, including but not limited to attorney's fees, arising out of or because of the construction, installation or maintenance of the Hurricane Shutters described above.

5. Owner agrees to be responsible for any damage to the Condominium Property, Association property or other Units within the Condominium which is caused as a result of the construction, installation or maintenance of the Hurricane Shutters described herein.

6. The Association shall not be required to approve or permit any Hurricane Shutter, unless and until the person requesting the installation thereof has fully and completely complied with each and every provision of these rules.

7. Contractor, subcontractor, laborer or material man shall be permitted entry upon the Condominium Property, for purposes of actual installation, construction or delivery of materials, unless and until the proposed Hurricane Shutter has been approved by the Association.

## **TECHNICAL SPECIFICATIONS FOR HURRICANE SHUTTERS**

1. The materials, equipment, installation and construction of Hurricane Shutters installed on any property subject to the rules of the Association shall conform in all respects with the applicable Building Code and any applicable requirements of construction established by the government agency having jurisdiction over construction in the Condominium related to the wind load requirements for hurricane shutters.

2. Further specifications are as follows:

Hurricane Shutters may be installed on windows, terraces or balconies appurtenant to the individual's Condominium Unit. Hurricane Shutters on terraces or balconies must be installed adjacent to the existing screen enclosure framing. Hurricane Shutters must be horizontal roll-up style that retract into a sealed housing. Accordion, lexan or steel panel type shutters are not permitted. Slats should be interlocking type fabricated from aluminum or any other product that meets current applicable building codes. The approved colors for Hurricane Shutter slats and housings are ivory, cream or off-white.

#### **IV. RULES AND REGULATIONS GOVERNING UNIT OWNER PARTICIPATION AT MEETINGS**

WHEREAS, Section 718.112 (2) (c), Florida Statutes, provides that the Association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements at meetings of the Board; and WHEREAS, the Board of Directors believes it is in the best interest of the Association to adopt rules, as contemplated by the above-referenced statutes. NOW THEREFORE, the following rules regarding Unit Owner participation at meetings are adopted:

##### ***A. BOARD AND COMMITTEE MEETINGS***

##### **1. Board and Committee Meetings Defined.**

- (a) "Board Meeting" is defined as a quorum of Directors gathered to conduct Association business.
  - (b) "Statutory Committee Meeting" is defined as a quorum of Statutory Committee members gathered to conduct the business of the committee.
  - (c) "Statutory Committee" means a group of Board members, Unit Owners, or Board members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the proposed annual budget or to take action on behalf of the Board.
2. **Attendance at Board or Statutory Committee Meetings.** Unit Owners have the right to attend Board and Statutory Committee Meetings, except as provided by law. No person other than a Unit Owner shall be permitted to attend such Meetings, unless permitted by the Chairman of the meeting. Unit Owners do not have the right to attend meetings of any Committee which is not a Statutory Committee, unless permitted by the Committee Chairman or required by law.

##### **3. Participation at Meetings.**

- (a) Unit Owners have the right to speak at Board and Statutory Committee Meetings. No other person shall be permitted to speak at such Meetings, unless permitted by the Chairman.
- (b) Statements by Unit Owners at Meetings shall be restricted solely to items designated on the agenda for that Meeting, unless permitted by the Chairman or a majority of the Board or Committee. No other statement shall be permitted.

(c) A Unit Owner will only be permitted to speak once in reference to each designated agenda item, unless otherwise requested to speak again by the Chairman of the Meeting. A Unit Owner statement shall not exceed three (3) minutes per agenda item, unless approved by the Chairman of the Meeting. Other Unit Owners cannot "yield" their time for the purpose of extending a Unit Owners time limit. The Chairman of the Meeting shall give the floor to the Unit Owner permitted to speak subsequent to the calling of the agenda item upon which the Unit Owner will make a statement, but prior to the discussion and voting of the Board or Committee upon that agenda item. In lieu thereof, the Chairman may set aside time at the beginning of the Meeting for Unit Owner statements regarding designated agenda items.

#### **4. Taping of Meetings.**

(a) Unit Owners may tape record or videotape any Meetings of the Board or Statutory Committee.

(b) A Unit Owner desiring to tape record or videotape a Board Meeting or Statutory Committee Meeting shall submit a written notice to the Secretary or Manager at least five (5) minutes before the start of the Meeting advising that the meeting will be tape recorded or videotaped. A separate written notice must be made for each meeting the Unit Owner desires to tape record or videotape.

(c) No tape recording or videotaping of any Meeting shall interfere with or obstruct the Meeting, and none of the equipment used for taping shall interfere with or obstruct any person's view of the Meeting or ability to hear the Meeting, or block access to or from the Meeting or to or from the seating in the Meeting, or constitute a tripping hazard. Extra lighting for videotaping shall not be permitted. Persons using taping equipment must do so from their seats. All taping equipment used shall conform to the electrical codes. No accessory shall be attached to any electrical outlet that enables more equipment to utilize the outlet than would normally and safely utilize the outlet.

### ***B. UNIT OWNER MEETINGS***

**1. Unit Owner Meetings Defined.** "Unit Owner Meetings" is defined as a quorum of Unit Owners gathered at a lawfully noticed meeting to conduct official Association business.

**2. Attendance at Unit Owner Meetings.** Unit Owners have the right to attend Unit Owner Meetings either in person or by proxy as may be provided by law. No person other than a Unit Owner or a Unit Owner's proxy shall be permitted to attend Meetings, except agents of the Association or persons permitted by the Chairman to an Association.

### **3. Participation at Unit Owner Meetings.**

- (a) Unit Owners have the right to speak at Unit Owner Meetings as provided by law. No other person shall be permitted to speak at Meetings, except agents of the Association, designated proxies, or those persons permitted to speak by the Chairman.
- (b) Statements by Unit Owners at meetings shall be restricted solely to items designated on the agenda for that Meeting, unless permitted by the Chairman or a majority vote of those present (in person or by proxy) at the meeting.
- (c) A Unit Owner will only be permitted to speak once in reference to the agenda item specified in the written request. A Unit Owner statement shall not exceed three (3) minutes, unless otherwise permitted by the Chairman. Other Unit Owners cannot "yield" their time for the purpose of extending a Unit Owners time limit. The Chairman of the Meeting shall give the floor to the Unit Owner permitted to speak subsequent to the calling of the agenda item upon which the Unit Owner will make a statement, but prior to the voting of the Unit Owners upon that agenda item.

### **4. Taping of Unit Owner Meetings.**

- (a) Unit Owners may tape record or videotape Unit Owner Meetings as permitted by law. A Unit Owner desiring to tape record or videotape such a Meeting shall submit written notice to the Secretary or Manager at least five (5) minutes prior to the start of the meeting.
- (c) No tape recording or videotaping of Unit Owner Meetings shall interfere with or obstruct the Meeting, and none of the equipment used for taping shall interfere with or obstruct any person's view of the Meeting or ability to hear the Meeting, or block access to or from the Meeting or to or from the seating in the Meeting, or constitute a tripping hazard. Extra lighting for videotaping shall not be permitted. All taping equipment used shall conform to the electrical codes. No accessory shall be attached to any electrical outlet that enables more equipment to utilize the outlet than would normally and safely utilize the outlet.

## ***C ENFORCEMENT OF MEETING RULES***

- 1. Fines.** The Board of Directors may, in accordance with the fining authority and procedures set forth in the Condominium Act, levy a fine against any person who fails to comply with this Rule.
- 2. Legal Action.** The Board of Directors may take whatever appropriate legal action is available against any person who fails to comply with this Rule.
- 3. Other Remedies.** Nothing in this Rule shall be construed as a limitation or restriction upon any of the Association's rights or remedies, or act as an election of remedies. All rights and remedies available to the Association shall be cumulative.

## **V. RULES AND REGULATIONS GOVERNING INSPECTION AND COPYING OF ASSOCIATION RECORDS**

WHEREAS, Section 718.11(12)(c), Florida Statutes, provides that the Association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying; and WHEREAS, the Board of Directors believes it is in the best interest of the Association to adopt rules, as contemplated by the above-referenced statute. NOW THEREFORE, the following rules governing inspection of the Official Records of the Association are adopted:

- A. RECORDS DEFINED.** The Official Records available for inspection and copying are those designated by Chapter 718, Florida Statutes, the Florida Condominium Act, as amended from time to time, as the Official Records of the Association, to the extent that the Association is required to maintain such records.
- B. RECORDS AVAILABLE.** No records other than those defined above shall be available for inspection or copying.
- C. PERSONS ENTITLED TO INSPECT OR COPY.** No Unit owner, or the Unit Owner's authorized representative, shall have any right to inspect or copy the records of the Association, except as permitted by law. All references to Unit Owner will include a Unit Owner's authorized representative. No other person shall be permitted to inspect or copy the Association records, unless approved by the Board, the President or unless required by law.
- D. INSPECTION AND COPYING.**

1. A Unit Owner desiring to inspect or copy Association records shall submit a written request by hand delivery during regular business hours, regular U.S. Mail or Certified U.S. Mail, Return Receipt Requested, to the Association at 1000 Arbor Lake Drive, Naples, FL 34110.

Requests by facsimile transmission, electronic mail (e-mail) or other means do not comply with this Rule. Verbal requests do not comply with this Rule. The written request must specify the particular records the Owner desires to inspect or copy, including pertinent dates or time periods. The specification of the particular records must be sufficiently detailed to permit the Association to retrieve the exact records requested. A Unit Owner's inspection request shall be deemed received as follows. If sent by regular U.S. Mail, five days after the date of post-mark on the letter transmitting the request. If by hand delivery during regular business hours, the day following the receipt of the hand-delivery. If by U.S. Certified Mail, Return Receipt Requested, the date that the receipt card was signed for by the Association.

2. Inspection or copying of records shall be restricted solely to those records specifically designated in the written request for inspection or copying and shall be conducted solely by the person signing the inspection request. If more than one Unit Owner desires to inspect the same records, the Association may require that such inspections are conducted at different times. No inspection or copying of any other records shall be permitted.
3. A Unit Owner shall not submit more than one (1) written request for inspection or copying of records per calendar month.
4. Inspections of records shall be conducted at the office where the Association's records are maintained or at such other location as may be designated by the Association. Records must be made available for inspection in the County where the Condominium is located or within forty-five (45) miles of the Condominium. No Unit Owner shall remove original records from the location where the records are inspected. No marks or alterations shall be made on original records.
5. Records shall generally be made available for inspection by the Association on or before the fifth (5th) working day subsequent to actual receipt by the Association of the written request for inspection. This time frame may be extended upon request of the Unit Owner or for good cause. In any case, the Association shall always use its best efforts to make records available for inspection by the tenth (10th) working day after receipt of the request, and the failure to do so shall create a rebuttable presumption that the Association has violated the provisions of this Rule. The Association may rebut the presumption by obtaining an opinion from legal counsel that the Association has, under the circumstances, attempted to address the Unit Owner's records inspection request in good faith. In addition, this time frame shall be extended in the event the records are so voluminous, or otherwise in such condition as to render this time frame unreasonable. The Association shall notify the Unit Owner by telephone or in writing, that the records are available and the time, date and place for such inspection. Inspection shall be made only during normal Association business hours, or during the normal business hours of the location of inspection if other than the Association office. For the purposes herein, "working day" shall mean Monday through Friday, exclusive of federal, state and local holidays in which the office of the Association is closed. For purposes herein, "normal business hours" shall be the hours the Association office is customarily open, or the hours the location where the records are to be inspected is customarily open, or if there are no customary hours of operation, then 9:00 A.M. to 12:00 P.M. and 1:00 P.M. to 4:30 P.M., all on a working day. No Unit Owner shall be entitled to inspect records for more than nine (9) hours in any calendar month. At the request of either the Association or the Unit Owner, inspections may be broken up into segments, provided that three (3) inspection visits per calendar month shall be the maximum number of sessions in a calendar month.

6. If at, or subsequent to, inspection, a Unit Owner desires to have a copy of a record, the Unit Owner shall designate in a separate writing which record, or portion thereof, for which a copy is desired, or, in the alternative, shall designate such record by use of a clip or tab upon the page(s) desired. Not more than one (1) copy of each record requested shall be permitted. If a Unit Owner wishes to make copies of any records inspected, they shall make the copies themselves at the Association's photocopier machine, assuming that the records to be copied during that visit constitute twenty-five (25) pages or less. The Unit Owner shall pay the Association the cost of ten cents (10¢) per page for copies made in this manner. If the number of copies requested exceeds twenty-five pages, the Association may have an Association staff person make the copies and they will be made available within two working days of the visit. Copies made by the Association for copy requests where the Association makes the copies shall be at the cost of twenty-five cents (25¢) per page. Records will not be released until payment is made. Payment may be made in cash or by check. The Association may, in its discretion, send voluminous copy requests out to an outside copying company. In such case, the Unit Owner shall be responsible for payment of the outside vendor's costs, in such manner as the Association may direct. Unit Owners requesting copies must arrange for pick-up of records. The Association shall have no obligation to mail or otherwise deliver copies to any place.

7. Records not normally kept in written form shall be produced for inspection in the form in which they are normally kept. However, if records are kept on computer format, the Association may print such records to paper. The Association shall not be obligated to allow Unit Owners to access the Association's computer system, nor shall it be required to make copies of computer records which may violate copyright laws, licensing laws or agreements, vendor agreements, or which involve proprietary software or computer data. The cost of converting non-written records to written format, where required, shall be in addition to the cost of copying such records, and the Unit Owner shall pay the reasonable expense of converting such records to written form, which expense shall be the actual cost of converting the record.

8. The Association may comply with its obligation to make Official Records available for inspection by providing them to the Unit Owner by electronic mail, the internet, or making them available in a computerized format readable with customary programs used in computers of consumers. If, however, a Unit Owner provides the Association with written notice that they do not have access to a computer, or do not wish to view records in this manner, the Association must supply the records in paper format.



***E. MANNER OF INSPECTION.***

1. For purposes hereof, a Unit Owner and the Unit Owner's authorized representative shall be considered one person. If inspection is requested by any person other than a record Owner of the Unit, said request shall not be recognized by Association unless and until the record Owners of the Unit designate such person, in writing, as their authorized representative or unless such person is an attorney admitted to practice in Florida.

2. All persons inspecting or requesting copies of records shall conduct themselves in a courteous manner, and shall not interfere with the normal operation of the Association office and the duties of its personnel, or the office where the records are otherwise inspected or copied or the duties of their personnel. The Association office, or office of inspection, may assign a staff person or other person to assist in the inspection and all requests for further assistance and copying during inspection shall be directed to that staff person.

***F. ENFORCEMENT OF INSPECTION AND COPYING RULE.***

1. Any violation of this Rule may result in the immediate suspension of the inspection or copying until such time as the violator agrees in writing to comply herewith.

2. Any requests for inspection and copying not complying with this Rule need not be honored, but in such cases the Association shall mail or hand-deliver a written response to the person requesting inspection and/or copying and shall indicate how the request fails to comply herewith.

3. The Board of Directors may take whatever appropriate legal action is available against any person who fails to comply with this Rule, including the levy of fines.

4. Nothing in this Rule shall be construed as a limitation or restriction upon any of the Association's rights or remedies, or act as an election of remedies. All rights and remedies available to the Association shall be cumulative.

5. The President of the Association, or the General Manager (under direction of the President), shall have the authority to interpret and implement the provisions of this Rule and make decisions and judgments arising herewith without need for Board approval on a case-by case basis.

## **VI. RULES AND REGULATIONS GOVERNING UNIT OWNER INQUIRIES**

WHEREAS, Section 718.112(2)(a)2, Florida Statutes (2011), provides that the Association, through its Board of Directors, may adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries; and, WHEREAS, the Board of Directors believes it is in the best interest of the Association to adopt a rule, as contemplated by the above-referenced statute. NOW THEREFORE, the following Rule is adopted:

- 1.** An "inquiry" is defined as a question, which specifically requests a response from the Association. Citation to the above-referenced statute is adequate.
- 2.** An inquiry will be deemed received by the Association, on the next business day following the day on which a duly-authorized representative of the Association signed for the certified letter of inquiry to the Association at 1000 Arbor Lake Drive, Naples, Florida 34110.
- 3.** All responses of the Association shall be in writing, and shall be deemed effective when deposited in the United States Mail, postage pre-paid, to the address of the Unit Owner, per the Official Records of the Association, or the address contained on the document constituting the inquiry.
- 4.** The Association is obligated to respond to one written inquiry per Unit owned in any given 30-day period. The Association shall respond to each pending inquiry, as required by law. A Unit Owner's submission of more than one inquiry per Unit owned during a thirty (30) day period, or the inclusion of more than one inquiry in a single piece of correspondence, shall result in the Association only responding to the first inquiry received. In such case, any additional inquiry or inquiries will be responded to in the subsequent thirty (30) day period or periods, as applicable.
- 5.** Unit Owners shall not be permitted to file more than one inquiry with the Association with respect to the same matter. If the Unit Owner is dissatisfied with the Association's substantive response, or disagrees with the response, that fact will not be sufficient to obligate the Association to engage in ongoing debate with the Unit Owner regarding the issue as to which a substantive answer has been given.
- 6.** Should any Unit Owner inquiry involve privileges pertaining to pending or potential litigation, matters subject to the attorney-client or work product privilege, or matters which involve any other legally cognizable privilege, the Association shall not be obligated to provide a substantive response to the Unit Owner if such would result in a waiver or violation of any privilege.
- 7.** Any violation of this Rule shall be deemed a violation of a rule of the Association, and shall subject the Unit Owner to all remedies provided by Florida Law and the governing documents with respect to same, including the levy of fines.

## **VII. FEE SCHEDULE**

The following is a schedule of fees charges by the Association, which may be modified by the Board of Directors from time to time, but which shall in no event exceed the maximum permissible by law. The entitlement to receipt of these fees may be allocated between the Association and a Community Association Management Firm or other third party as provided in a written agreement. Attorney's fees incurred by the Association with respect to the issues for which fees are levied may be passed on to Unit Owners or other third parties, if permitted by law, and shall be in addition to the Association's fees.

### **1. Deposits:**

Security Deposit for Tenants \$ 250.00

### **2. Transfer Approvals:**

Lease Approval \$100.00

### **3. Miscellaneous:**

Photocopying of Association's Official Records Kept in Paper Form, up to 25 pages (without staff assistance) \$.10 (10 cents) per page.

Photocopying of Association's Official Records Kept in Paper Form, up to 25 pages (with staff assistance) \$.25 (twenty-five cents) per page.

Copying of other Official Records .Actual Cost to Association.

## **VIII. RULES AND REGULATIONS ESTABLISHING ASSESSMENT COLLECTION POLICY**

WHEREAS, Arbor Trace Condominium- Association, Inc. (hereinafter referred to as "Association") desires to adopt a policy regarding the collection of Assessments; and NOW THEREFORE, the Board of Directors of the Association hereby establishes the following assessment collection policy. All capitalized terms shall be given their meaning as described in the Condominium Declaration or the Act, as those terms are defined later herein, or the definitions ascribed to said terms in this Policy:

1. Article 10 of the Amended and Restated Declaration of Condominium of Arbor Trace, A Condominium (hereinafter referred to as "Declaration"), as amended, states in pertinent part:

**10. ASSESSMENTS AND CHARGES.** Assessments against Owners shall be made by the Board of Directors of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the basis set forth in Article 6 and elsewhere in these Condominium Documents.

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

**10.2 Default in Payment of Assessments for Common Expenses or Charges.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such parcel, with interest, late fees and for reasonable attorney's fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. If prohibited by the Act, no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4), Florida Statutes (2011), as amended from time to time. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law.

The Association's lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment in full, the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments or Charges in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments or Charges without waiving any claim of lien.

**10.3 Notice of Intention to Foreclose Lien.** So long as required by law, no foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this provision are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**10.4 Attachment of Rental Income When Unit is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association shall have the following options when payment of Assessments or Charges are in default (more than ten days in arrears). The Association may, without order of the Court, direct rental income (by written notice to the Tenant with copy to Unit Owner) from Units in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, late fees, costs, collection expenses, attorney's fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the Condominium Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

**10.5 First Mortgagee.** The priority of the Association's lien and the obligation for payment of past due Assessments or other sums due in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2011), as amended from time to time.

**10.6 Certificate of Unpaid Assessments or Charges.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments or Charges against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

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

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

2. The following provisions of Chapter 718, Florida Statutes (2011), the Florida Condominium Act (hereinafter referred to as the "Act"), address rights and remedies of the Association in connection with delinquent Assessments as follows:

(a) Section 718.112(2)(d)1 of the Act provides that a person who is delinquent in the payment of any monetary obligation is not eligible for Board membership.

(b) Section 718.112(2)(g) of the Act permits the acceleration of Assessments of an owner delinquent in the payment of Common Expenses. Accelerated Assessments shall be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of year is filed.

(c) Section 718.112(2)(n) of the Act provides that a Director or Officer more than 90 days delinquent in the payment of any monetary obligation shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

(d) Section 718.116(4) of the Act provides that if the Association is authorized by the Declaration or Bylaws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to the Unit Owner being delinquent in the payment of an Assessment at the time approval is sought.

(e) Section 718.116(6)(c) of the Act provides that if a Unit Owner remains in possession of a Unit after a foreclosure judgment has been entered, the Court, in its discretion, may require the Unit Owner to pay reasonable rental for the Unit. This provision of the Act further provides that if the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to appointment of a receiver to collect the rent.

(f) Section 718.121 of the Act provides that no lien may be filed by the Association until thirty days after the date on which a notice of intent to file a lien has been delivered to the Owner by registered or certified mail, return receipt requested, and by first-class United States mail to the Owner at his or her last address as reflected in the records of the Association, if the address is within the United States, and delivered to the owner at the address of the Unit if the owner's address is reflected in the records is not the Unit Address. If the address reflected in the records is outside the United States, sending the notice to that address and to the Unit address by first-class United States mail is sufficient. Delivery of the notice (hereinafter "Statutory First Notice") is deemed given upon mailing as required by the Act.

(g) Section 718.303(3) of the Act provides that if any Unit Owner is more than 90 days delinquent in the payment of any monetary obligation to the Association, the Association may suspend the right of the Unit Owner, or a Unit's occupant, licensee or invitee to use common elements, common facilities or any other Association property until the monetary obligation is paid.

(h) Section 718.303(5) of the Act provides that the Association may suspend the voting rights of any Unit Owner if such Unit Owner becomes more than 90 days delinquent in the payment of any monetary obligation to the Association. Such suspension shall end upon full payment of all obligations currently due or overdue the Association.

**3.** References to "Assessments" herein shall refer to Annual Assessments which are payable monthly or quarterly, as specified by the Board, and due on the first day of each month or quarter, as applicable (hereinafter the "Assessment Due Date") and Special Assessments which are due on the date specified by the Board in the notice of the assessment given pursuant to Section 718.116(10), of the Act ("Special Assessment Due Date"). The Assessment Due Date and Special Assessment Due Date shall collectively be referred to as the Due Date. All Assessments or Charges not paid within ten (10) days after the Due Date shall be considered delinquent.

**4.** A monetary obligation as that term is used herein shall include any regular Assessment, Special Assessment, Fine, or Charge authorized by the Declaration, the Bylaws of the Association or the Act.

5. If payment of an Assessment in full has not been received by the Association, at such location as the Association may specify from time to time, within ten (10) days of the Due Date, the Association (either itself, or through its agent) will add a late fee of five percent (5%) of the installment due, or \$25.00, whichever is greater. Interest at 18% per annum shall also be added, retroactive to the due date.

6. Once any Assessment is thirty (30) days past the Due Date, the Association will turn the matter over to its attorney, who in turn will send a Statutory First Notice. Delinquency for the purposes of this Policy shall be measured from the Due Date, without regard to the ten day "grace period" provided in Paragraph 3. Owners shall be responsible for all applicable late fees and interest as referenced above, as well as all reasonable expenses of collections and costs and attorney's fees affiliated with the statutory First Notice.

7. Once any Assessment is sixty (60) past the Due Date, or the payment deadline from the attorney's Statutory First Notice has lapsed, whichever is later, the Association's attorney shall record a claim of lien and provide the Unit Owner with notice of intention to foreclose a lien, as required by the Act, in order to collect the outstanding amounts owed, including but not limited to the amount of the delinquent Assessment(s), interest, late fees, attorney's fees and costs, reasonable collection expenses and any amounts that have been accelerated. The President of the Association, or the Manager, shall have the authority to instruct counsel to also accelerate remaining assessments for the fiscal year, if after consultation with legal counsel, the President or Manager believes that acceleration is in the best interest of the Association, which may be considered on case-by-case basis. Such claim of lien shall also secure, including but not limited to, all unpaid Assessments, attorney's fees, interest, late fees, costs and reasonable expenses of collection which are due or may become due subsequent to the date the claim of lien is recorded. The Association's attorney will also send a notice advising the owner that a foreclosure action will be commenced unless the entire amount indicated on the claim of lien, as well as any sums that have accrued since the date of the claim of lien, are paid within thirty (30) days from the date of the notice.

8. The Association has the authority to approve lease applications pursuant to Article 15 of the Declaration. If a Unit Owner is delinquent in the payment of Assessments at the time an application for rental or lease of a Unit is received, the President or Manager shall have the authority to deny the application, without need for prior approval of the Board of Directors. The Association may grant conditional approval for lease or rental of a Unit when the Unit is delinquent in the payment of Assessments contingent upon written agreement from the Unit Owner and the Tenant to pay all rent due from the Tenant to the Unit Owner to the Association, until all past-due Assessments (including late fees, interest, cost, and attorney's fees) have been paid up, with an additional proviso that future rentals may be directed to the Association if the Unit again becomes delinquent in the payment of Assessments during the lease term. Further, the Association shall have the right to attach rental income as may be authorized by the Declaration, the Bylaws, or law.



**9.** Pursuant to Article 15 of the Declaration, the Association may withhold approval for transfer of a Unit until all past-due Assessments (including late fees, interest, cost, reasonable collection expenses, and attorney's fees) have been paid.

**10.** Any person who is delinquent in the payment of any monetary obligation to the Association by more than 90 days is not eligible to sit on the Board of Directors. If such an individual has submitted a notice of intent to run for the Board, their name shall not be included on the annual meeting ballot where such individual is delinquent on the date of the deadline for submitting a notice of intent to run. Further, such individual shall not be eligible for appointment to the Board, in the event of no election.

**11.** Should any person become more than 90 days delinquent in the payment of any monetary obligation to the Association, the Board of Directors shall consider the suspension of such Unit Owner's, or Unit occupant's, invitee's, or licensee's, use rights of the Common Elements and Association Property and voting rights, at a regularly scheduled Board meeting or Special meeting of the Board. In the event that such suspension is imposed at said meeting, the Association shall notify the Owner, and if applicable, the Unit's occupant, licensee or invitee of such suspension by mail or hand delivery. Such suspension shall continue until the receipt of full payment of all obligations currently due or overdue the Association. The Unit Owners whose voting rights have been suspended by *this* Resolution shall be subtracted from the quorum and voting requirements of any votes taken during such suspensions to the extent permitted by the Act, the Declarations or the Association's Bylaws.

**12.** It is the intent of the Board that this collections policy be adhered to as closely as possible. However, any deviation from or waiver of *this* Policy will not affect the collections process and cannot be raised as a defense by a delinquent Unit Owner in any collections proceeding. Further, the Board shall have the authority to deviate from or waive the provisions of *this* Policy, when in the opinion of the Board of Directors, the best interests of the Association are served by such waiver or deviation, including but not limited to situations where substantial hardship or excusable neglect by the Unit Owner has been shown. The waiver or deviation of the provisions of this Policy in one instance shall not require waiver or deviation in any other instance.

**13.** The President of the Association or the Manager of the Association shall have the authority to implement this Policy, without need for specific approval of the Board, except that the suspension of rights provided for in Paragraph 11 and the waivers provided for in Paragraph 12 shall be considered by the Board.

**IX. RULE REGARDING CONTRACTS FOR GOODS OR SERVICES IN EXCESS of \$25,000.00**

No contract for goods or services exceeding \$25,000.00 shall be entered into by the Association without the prior approval of the Board of Directors of the Condominium Association. Such approval shall be made at a regularly scheduled board meeting or at a specially scheduled meeting, following proper notice, called for the purpose of considering approval of the proposed contact.