

Prepared by and returned to:

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Becker & Poliakoff, P.A.  
4001 Tamiami Trail North, Suite 410  
Naples, FL 34103

**CERTIFICATE OF RECORDATION**  
**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**TOLLGATE BUSINESS PARK II CONDOMINIUM**  
**AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
**AMENDED AND RESTATED BYLAWS**  
**OF**  
**TOLLGATE BUSINESS PARK II CONDOMINIUM ASSOCIATION, INC.**

I HEREBY CERTIFY that the attached Amended and Restated Governing Documents were duly adopted by the Association membership at the duly noticed Annual Membership Meeting of the Association on the 29<sup>th</sup> day of January 2019. Said Amended and Restated Governing Documents were approved by a proper percentage of voting interests of the Association. The Declaration of Condominium of Tollgate Business Park II is recorded at O.R. Book 3873, Page 1281, *et seq.*, of the Public Records of Collier County, Florida.

The Amended and Restated Declaration of Condominium for Tollgate Business Park II is attached hereto. The Amended and Restated Articles of Incorporation of Tollgate Business Park II Condominium Association, Inc. are attached as Exhibit "A." The Amended and Restated Bylaws of Tollgate Business Park II Condominium Association, Inc. are attached as Exhibit "B."

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TOLLGATE BUSINESS PARK II  
CONDOMINIUM ASSOCIATION, INC.

By: 

Mark Snider, President

Attest: 

Anthony N. Caporale, Secretary

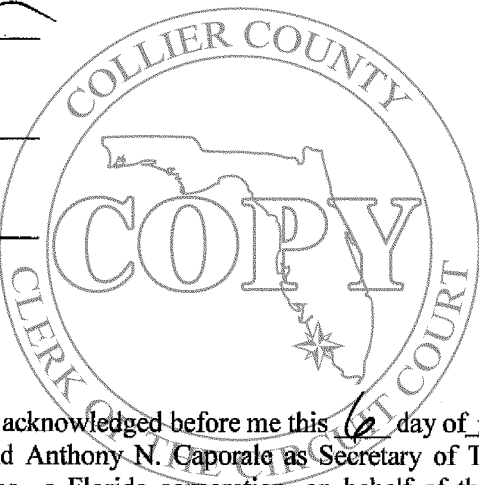
  
Witness Signature

James Parosh  
Printed Name

  
Witness Signature

Mark Snider  
Printed Name

STATE OF FLORIDA  
COUNTY OF COLLIER



The foregoing instrument was acknowledged before me this 6 day of February 2019 by Mark Snider, as President and Anthony N. Caporale as Secretary of Tollgate Business Park II Condominium Association, Inc., a Florida corporation, on behalf of the corporation. They are personally known to me or have produced \_\_\_\_\_ as identification. If no type of identification is indicated, the above-named persons are personally known to me.

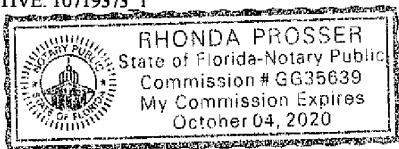
  
Notary Public

Rhonda Prosser  
Printed Name

State of Florida

My Commission Expires Oct. 4, 2020

ACTIVE: 10719373 1



**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**TOLLGATE BUSINESS PARK II, A CONDOMINIUM**  
**SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM-**  
**SEE CURRENT DECLARATION OF CONDOMINIUM FOR PRESENT TEXT**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 3873, Page 1281, *et seq.* of the Public Records of Collier County, Florida, on August 23, 2005, 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 land submitted to the Condominium is described in Exhibits A through C to the original Declaration, as amended.

The Condominium Property is further described at Condominium Plat Book 22, Page 95, *et seq.*, of the Public Records of Collier County, Florida.

Said Declaration was subsequently amended and supplemented as follows:

Amendment recorded at O.R. Book 3873, Page 1362, *et seq.*, Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 3876, Page 3082, *et seq.*, Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 3876, Page 3085, *et seq.*, Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 3965, Page 3480, *et seq.*, Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 3965, Page 3484, *et seq.*, Public Records of Collier County, Florida;

Amendment recorded at O.R. Book 5276, Page 1880, *et seq.*, Public Records of Collier County, Florida;

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 (hereinafter "Declaration"), the Association Members hereby adopt certain amendments to the Declaration of Condominium and amendments thereof and hereby restate the Declaration in its entirety. By adoption of this Declaration, the Members of the Association ratify governance of the property described above and in Exhibits "A" through "C" to the original Declaration under the condominium form of ownership and the provisions of the Condominium Act, as defined in Article 1.1 hereof, as a nonresidential Condominium Property.

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

**1.2 "Articles"** means the Articles of Incorporation as attached hereto as **Exhibit "A,"** as they may be amended from time to time.

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

**1.4 "Association"** means TOLLGATE BUSINESS PARK II CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

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

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

**1.7 "Building"** means the 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 "B,"** as they may be amended from time to time.

**1.9 "Casualty"** for the purposes of this Declaration, and not for the purpose of construing coverage between any insurer and insured, means an event which causes damage to the Condominium Property due to some sudden, fortuitous cause, including (but not limited to) fire, flood, hail, wind, rain, vandalism, explosion, or bursting pipes, but does not include progressive decay or corrosion, or slow or continuous leaks.

**1.10 "Charge"** means any legal or equitable indebtedness or monetary obligation of a Unit Owner to the Association, or other sums owed to or due to the Association from a Unit Owner, or any cost or expense incurred by the Association on behalf of or because of a Unit Owner, other



than Assessments for Common Expenses, which the Unit Owner is obligated to pay to the Association. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

**1.11 “Committee”** means a group of Board Members, Unit Owners, or Board Members and/or Unit Owners and/or other persons appointed by the Board to make reports or recommendations to the Board, to take action on behalf of the Board, or to take such actions as the Resolution creating the Committee, or the Directors of the Board, may dictate.

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

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

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

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

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

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

**1.12.5.1** the land within the legal description of the Condominium;

**1.12.5.2** private roads and driveways; outdoor parking areas; landscaping, lawns, green spaces, common sidewalks and walkways;

**1.12.5.3** the building exterior, foundation or slabs, roof, exterior and bearing walls and columns, the common areas and all parts of the building not included in the Units;

**1.12.5.4** easements through Units for conduits, pipes, ducts, vents, plumbing, cables, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services including, but not limited to, water, sewer, electric, communications, television, telephone, and similar utilities to Units and Common Elements;

**1.12.5.5** easements of support in every portion of a Unit which contributes to the support of other Units and/or Common Elements;

**1.12.5.6** installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation;

**1.12.5.7** the property and installations in connection therewith required for the furnishing of services to more than one Unit or to the Common Elements;

**1.12.5.8** fixtures owned or held for the common use, benefit and enjoyment of all owners of Units in the Condominium;

**1.12.5.9** those lands and improvements which may be added to the Condominium as Common Elements from time to time.

**1.13 “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. Bulk interior pest control for Units, if provided by the Association is a Common Expense. Common Expenses include, but are not limited to, such items as cost of premiums for property and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills and governmental services (including but not limited to water, sewer, electricity and trash collection) that are not separately metered or billed to individual Units, 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 Board shall further have the authority and the discretion to equitably and in a reasonable manner apportion the water and sewer utility expenses amongst the Unit Owners based on their individual per Unit usage, but this authority shall include (but not be limited to) the Board’s right to establish a minimum monthly charge per Unit regardless of amount of water usage in a given month. 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.

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

**1.15 “Condominium Documents”** means this Declaration; the Surveyor’s Plat and Site Plans, hereinafter collectively referred to as “the Plat” or “Condominium Plat,” and incorporated into and considered part of the Declaration (the Plat and the Surveyor’s Certificates of Substantial Completion may not reflect the actual configuration of the Condominium Property, as deviations from original as-built conditions may have been made over time); Articles of Incorporation of Tollgate Business Park II Condominium Association, Inc. attached hereto as **Exhibit “A;”** Bylaws attached hereto as **Exhibit “B;”** and Rules and Regulations. The Rules and Regulations need not (but may) be recorded in the Public Records of Collier County, Florida, in order to be valid.

**1.16 “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.

**1.17 “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. References in the Condominium Documents to Condominium Property shall include Association Property, unless indicated otherwise.

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

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

**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, who is physically present on or occupies the Condominium Property on a temporary basis at the expressed or implied invitation of the Owner, without the payment of consideration.

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

**1.23 “Insurable Improvements”** shall mean the “Buildings” as defined in Article 1.7 of this Declaration, other than 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.

**1.24 “Invitee” or “Licensee”** shall mean a person or persons expressly or impliedly allowed entry onto the Condominium Property for the purpose of conducting business with or providing services to a Unit, or otherwise entering the Condominium Property on a temporary basis at the expressed or implied consent of the Unit Owner, including but not limited to contractors, workmen, delivery persons, domestic assistants and health care assistants. A Guest is an Invitee.

**1.25 “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. Leasing shall be construed to include any licensing or other arrangement with a third party where persons other than the Unit Owner are permitted to occupy the Unit for the payment of consideration to any party.

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

**1.27 “Limited Common Elements”** means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified in this Declaration. References herein to Common Elements shall include all Limited Common

Elements, unless the context would prohibit or it is otherwise expressly provided. 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 shall serve to define the area as a Limited Common Element. Limited Common Elements include, but are not limited to, exterior signage, overhead garage doors, any exterior private entry area which is attached or contiguous to an individual Unit, and any air conditioning and heating equipment, fixtures and installations located within or outside the boundaries of a Unit, which service such Unit exclusively, as may be shown on Exhibits "A" through "C" of the original Declaration.

**1.28 "Limited Common Expenses"** 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 the Act, and if so provided in this Declaration.

**1.29 "Maintenance"** shall mean, unless the context of a provision in the Condominium Documents requires otherwise, day to day cleaning, heavy cleaning, painting where applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. The term "maintenance" shall not include repair after casualty, unless the context of a provision in the Condominium Documents requires otherwise. Whenever a Unit Owner is obligated by the Condominium Documents or law to maintain, repair or replace portions of the Condominium Property, the Board of Directors shall have the authority to establish reasonable standards for such maintenance, repair or replacement, including mandating maintenance, repair or replacement of said items, when the Board deems same are reasonably necessary.

**1.30 "Master Association"** means Toll Gate Commercial Center Property Owners Association, Inc. The Condominium Property is in addition subject to that certain Dedication of Easements, Restrictions, Covenants Rules and Regulations Relating to Construction, Maintenance and Architectural Control of Toll Gate Commercial Center P.U.D. ("Master Covenants") recorded in Official Records Book 1455, Page 535 et seq., of the Public Records of Collier County, Florida, and any amendments thereto, subjecting to its terms the land therein described, including the Land hereby submitted to condominium ownership. A Master Declaration formed pursuant to terms of the Master Declaration will be utilized to effectuate the purposes of the Master Declaration, and is described in Section 22.2 herein.

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

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

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

**1.34 "Person"** means any individual or representative of an entity, including Unit Owners, Tenants, Guests, and Invitees. Whenever the word "Person" is used to require or prohibit

certain conduct, it is the intention that the Owner of the Unit with which such Person is affiliated shall be responsible for ensuring such Person's compliance with the Condominium Documents.

**1.35 "Policies and Procedures"** means the administrative policies of the Board adopted in writing from time to time, including those documented in minutes of the Board or correspondence issued under the authority of the Board. Policies and Procedures shall be deemed part of the Rules and Regulations, and hence part of the Condominium Documents.

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

**1.37 "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. Wherever a portion of the Condominium Documents, including the Rules and Regulations, proscribes, restricts, prohibits, governs or requires that a "Unit Owner" take or refrain from taking any action, or engage or refrain from engaging in any conduct, or providing for liability to the Association arising from such acts or conduct or the failure to take required action or engage in required conduct, the term Unit Owner shall be deemed to include, unless the context specifically suggests otherwise, the Unit Owner's Tenants, Guests, Licensees and Invitees, and as may be applicable, as well as employees or agents of such persons.

**1.40 "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.

**1.41 "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 sixty-four (64) Units, so the total number of Voting Interests is sixty-four (64).

**2. STATEMENT OF CONDOMINIUM DECLARATION.** GRAND CYPRESS COMMUNITIES, INC. submitted the property described in Exhibits "A" through "C" to original Declaration and as described above to condominium ownership in accordance with Florida Statutes.

**3. CONDOMINIUM NAME.** The name by which this Condominium is identified is "Tollgate Business Park II, A Condominium."

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be as indicated on the Plat, which is attached as Exhibits "A" through "C" to original Declaration.

**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 Plat, which is attached as Exhibits "A" through "C" to original Declaration.

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the Owner of each Unit shall be 1/64<sup>th</sup> (one Voting Interest per Unit). Voting rights may be suspended pursuant to the terms of the Condominium Documents and/or Florida law. The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be on a 1/64<sup>th</sup> basis. Suspension of voting rights shall not affect the basis for which Common Expenses are shared or Common Elements and Common Surplus owned. However, suspended Voting Interests shall be subtracted from the total number of votes required when calculating any required vote or quorum during the period for which said Voting Interest is suspended. The undivided share of ownership of the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. As long as the Condominium exists, the Common Elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

**7. EASEMENTS.** Each of the following easements and easement rights is reserved through the Condominium Property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium, unless released in connection with termination of the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the Unit Owners with respect to such easements.

**7.1 Utility and Other Easements.** The Association, through the Board 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 communications, information or internet service easements, or other access, utility or service easements, or relocate any existing easements, in any portion of the Condominium Property or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. The Association, through the Board 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 Encroachments.** If any Unit encroaches upon any of the Common Elements or upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any Common Elements encroach upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

**7.3 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit Owner, their respective Guests, Tenants, and Invitees for pedestrian traffic over, through, and

across sidewalks, streets, paths, walks, and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portion of the Common Elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

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

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

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

**8.1 Units.** The term "Units," as used herein, means the separate, numbered commercial condominium parcels in the Condominium which are located and shown on Exhibits "A" through "C" of original Declaration.

**8.1.1 Excluded from the Units are:**

**8.1.1.1** all spaces and improvements lying outside of or beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the lowest horizontal plane of the upper structural element (the interior of the roof or ceiling) of each Unit; and

**8.1.1.2** all spaces and improvements lying within or beneath the undecorated and/or unfinished outer surface of all interior columns, bearing walls and/or bearing partitions.

**8.1.2 Included with the Units are:**

**8.1.2.1** apertures, so that where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the Unit shall extend to the exterior surfaces of such openings, and the frameworks thereof (windows, doors, surfaces made of glass or other transparent or translucent material and all framings, casings and hardware therefor, are included in the Unit); and

**8.1.2.2** all pipes, ducts, vents, wires, conduits and other facilities, equipment and/or fixtures running through any interior wall or horizontal or vertical partition of a Unit, for the furnishing of utility services, heating and cooling and/or ventilation to Units, Common elements and/or Limited Common elements, such as window fans or window air conditioning units. The building and Units will not be equipped with central heating, ventilating, or air conditioning. All glass and other transparent or translucent material, insect screens and screening in windows and doors and similar materials covering other openings in the exterior boundary of

Units shall be construed to be within the boundaries or limits of the Unit(s) exclusively served by such windows, doors and other openings, and shall be the responsibility of the owner thereof. Units will include an interior office space with a drop ceiling, and a bathroom, as shown on Exhibit "B" of original Declaration, all of which, including the ceiling, shall be the responsibility of the Unit owner. Any HVAC equipment or rooms and/or air conditioning units or similar equipment such as water heaters installed by a Unit owner and serving a particular Unit shall be construed to be within the boundaries or limits of the Unit served by such equipment.

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

**8.3 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:

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

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

**8.3.3 Association Membership** and interest in funds and assets held by the Association, provided that funds of the Association are not divisible and may not be separately hypothecated and further provided that the Association may suspend voting rights and other incidents of membership as provided by the Act.

**8.3.4 Limited Common Elements.** The right to exclusive use of the Limited Common Elements designated by this Declaration.

**8.4 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, Repair and Replacement Obligation.** The maintenance, repair and replacement of all Common Elements and Association Property shall be performed by the Association, and the cost is a Common Expense, except as may otherwise be specifically noted with respect to Limited Common Elements. The Board of Directors shall have the authority to declare Units in the Condominium not available for occupancy when, in the reasonable discretion of the Board, considerations of safety result in a finding by the Board that a Unit or Units should not be inhabited during such periods of work.

**9.1.1 General Exterior and Structural Maintenance.** The Association's maintenance, repair and replacement responsibility shall include, but not be limited to, exterior painting, structural maintenance of the Buildings, roofing, maintenance of parking facilities



(except as otherwise provided herein to the contrary), and general exterior maintenance, but shall not include maintenance, repair and replacement of hurricane shutters, 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 or any structural element 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 (but not including) the main circuit breaker (located on the east side of the Buildings) outward; electrical conduits and installations located within or outside a Unit for the furnishing of Utility Services 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 Utility Services to another Unit, more than one Unit, or the Common Elements. The Association's maintenance, repair and replacement responsibility (a) 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, said items being the maintenance, repair and replacement responsibility of the Unit Owners, and (b) does not include other electrical fixtures, switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations which are the maintenance, repair and replacement responsibility of the Unit Owners pursuant to Section 9.2.

**9.1.3 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 specifically excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, and further provided that the Association's obligations are limited to the replacement of items that were part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality, and except in cases of Casualty repair, or repair of damage caused by a covered cause of loss under the Association's applicable insurance policy, which shall be governed by Article 13 of this Declaration. When a Building component must be replaced with an upgraded component to comply with current laws, ordinances, or codes, the Unit Owner shall be responsible for the additional costs, secured by a Lien for Charges, for the amount by which the upgraded component exceeds the cost of a like-kind replacement. 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, Repair and Replacement Obligation.** 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, to the extent 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 or subsequent replacement thereof. The Unit Owner's maintenance responsibility includes the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owner shall be responsible for interior window locking and opening mechanisms, the windowsill and glass breakage due to any cause, unless covered by insurance.

**9.2.2 Drywall and Finishes.** 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, except that the Association shall maintain, repair and replace drywall on the interior side of the exterior boundary walls, and the drywall on the ceiling of the Units, and the permanent finishes on ceilings, if any (but not paint or other cosmetic finishes).

**9.2.3 Electrical.** The Unit Owner shall maintain, repair and replace all electrical fixtures, apparatus or installations which exclusively services a given Unit, regardless of whether the subject plumbing is located inside or outside the Unit boundary, including the circuit breaker located inside of the Unit.

**9.2.4 Entry Doors.** The Unit Owner shall maintain, repair and replace Unit entry doors, except that the Association may paint the exterior of entry doors.

**9.2.5 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.

**9.2.6 Window Screens.** The Unit Owner shall maintain, repair and replace all window screens.

**9.2.7 Hurricane Shutters.** The Unit Owner shall maintain, repair and replace hurricane shutters and the structural components thereof.

**9.2.8 Electrical, Plumbing and Mechanical Fixtures.** 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.

**9.2.9 Appliances.** The Unit Owner shall maintain, repair and replace any appliances located within the Unit.

**9.2.10 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), dryer vents to the point of termination (even if exterior to the Unit), air conditioner or air handler discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit).

**9.2.11 Floor Coverings.** The Unit Owner shall maintain, repair and replace carpeting and other floor covering.

**9.2.12 Other Equipment and Fixtures.** The Unit Owner shall maintain, repair and replace all other equipment 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 which exclusively services a given Unit, regardless of whether the subject plumbing is located inside or outside of the Unit boundary.

**9.2.14 Plumbing (Outgoing).** The Unit Owner shall maintain, repair and replace outbound plumbing which exclusively services a given Unit, regardless of whether the subject plumbing is located inside or outside the Unit boundary.

**9.2.15 Water Meters; Shut-Off Valves.** The Unit Owner shall maintain, repair and replace water meters and shut-off valves, wherever located, which exclusively service a given Unit.

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

**9.3 Unit Owner Obligations In Connection with Maintenance, Repair and Replacement.** 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 the Unit Owners, Tenants, Guests, etc. 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 contractor(s) that are properly licensed and fully insured, and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. Unit Owners are responsible for the actions of their contractors and warrant to the Association, whether or not specifically made a condition of Association approval (or in cases where no Association approval is required) that all persons coming into the Condominium Property to perform work on or

services for the Unit hold all proper licenses, have obtained all proper permits, and carry such insurance as may be required by law or the Board;

- 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 and days 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. “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.
- 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 Association may, but shall not be obligated to, act as the Owner’s agent in obtaining the services of contractors or others to perform Unit Owner maintenance responsibilities in the event of an emergency, or in non-emergency situations, provided that in non-emergency situations, the Association and the Owner so agree, or absent such agreement when such work is deemed necessary, as 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 or elsewhere upon the Condominium Property, that all contractors and other persons performing services for the Unit Owner are properly licensed and insured, including required Worker's Compensation insurance, and that the Condominium Property is kept free from liens and cause no damage to the Condominium Property. The Board has the power (but not the duty) to require proof of: licensure; building permits; and insurance, and may set standards for insurance as to required coverage, deductibles, or other terms and conditions, and may require the Association to be named as an additional insured under such policies. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with these requirements.

**9.4 Modifications, Alterations or Structural Work 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 of his Unit, or in any manner change the appearance of any portion of the Common Elements, undertake any structural work, or undertake any structural modification or alteration, 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" work, 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, etc.; the removal or modification of any partition, door, window or screen; raising ceilings. For purposes of this provision, the term "structural" work shall also include the addition, removal, or relocation of any ductwork, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances and fixtures with substantially equivalent installations in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" work, modifications or alterations 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 circumstances it deems appropriate, and without limiting the right to ask for plans or specifications and other relevant information, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board may require, as a condition of review, the Unit Owner's obligation to pay the Association's expenses of review, including but not limited to, legal, engineering or other consultant fees. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Tollgate Business Park II, the quality of the proposed alteration, objections of neighboring Unit Owners, and such other criteria as the Board may reasonably adopt in reaching its decision, without limitation. The Board may take into account whether other Unit Owners would be able to make such alterations or modifications, and the effect of the fact that similar requests may need to be approved by the Association. If the Board determines to permit any modification or alteration which is visible from the exterior of the Unit, from any vantage, said

modification or alteration must also be approved by the Unit Owners in the manner provided in Article 9.6 of this Declaration, regardless of the cost or expense of such modification or alteration, provided that the Board may waive the request for Unit Owner approval if similar modifications or alterations have been approved by the Association previously, are *de minimus* (as determined in the sole discretion of the Board), or are specifically authorized by the Condominium Documents. If any Unit Owner requests approval of any structural work, modification or alteration, the Association may permit such work, modification or alteration if same would not materially affect or interfere with the Utility Services constituting Common Elements, if any, located therein, the structural integrity of the Building, or create a nuisance or disturbance to neighboring Units.

**9.5 Additional Unit Owner Responsibility for Modifications or Alterations.** If a Unit Owner (or his predecessors in title) makes, or has made any modifications or alterations to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, preservation, reconstruction, repair or replacement of the modification or alteration and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Any modification or alteration to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the modification or alteration (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or reinstallation of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said modification or alteration, if so determined by the Board 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.

**9.6 Material Alterations or Additions by Association.** Except as may be provided elsewhere in this Declaration to the contrary, there shall be no Material Alteration or Addition to the Common Elements or Association real property by the Association, except as authorized by the Board of Directors. Provided, however, any such Material Alteration or Addition shall require the Board to obtain approval of seventy-five (75%) of the Voting Interests of the Association. 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 and apparatus to provide communication or internet services may be placed on the Condominium Property as authorized by the Board, subject to approval of any other entity that may be required.

**9.7 Enforcement of Maintenance.** If, after reasonable notice, the Owner of a Unit fails to maintain the Unit or other portions of the Condominium Property as required by the Condominium Documents, or as may be required to comply with law, the Association shall have, without waiver or limitation of other remedies available under the Act or Condominium Documents, the right to enter the Owner's Unit or Common Elements (including Limited Common Elements) and perform or cause performance of the necessary work, and/or institute legal proceedings at law or in equity to enforce compliance, and/or to take any and all other lawful

actions to remedy such violation; in which event, the Unit Owner shall be charged for the costs of such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.8 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 wrongful act, omission, negligence, violation of the Condominium Documents or applicable law, or same by their 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 is caused by the Owner's (or his Guest's, Tenant's or Invitee's) wrongful act, omission, 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, and without impairing any coverage obligation which may exist as a matter of law or contract, provided that such responsibility shall be conditioned on the Unit(s) which is/are seeking to impose such liability 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 or responsibility on the Association or other Unit Owners (without limitation, the Association shall not be obligated to obtain proof of Unit Owner insurance), 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 is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may, but is not obligated to, enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, including without limitation initiating "dry-out" procedures as agent for the Unit Owner, and 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 an extended period of time (as may be further defined by the Board), 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 the Unit Owner fails to maintain Utility Services to the Unit, the Association shall have, without waiver of other remedies, the right to enter the Owner's Unit and Limited Common Elements and take any and all lawful actions to make the Utility Services available to service the Unit; in which event, the Unit Owner shall be charged for such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a Lien for Charges.

**9.9 Combination of Units.** Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to a single 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 successors in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination of the Units. Should the Board, in its discretion, determine that the Association must retain independent professionals to review the request, including but not limited to engineers, architects, or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses.

**9.10 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. As required by Section 9.4 herein, prior written Board approval is required before hurricane protection is installed by a Unit Owner in their Unit.

**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, attorneys' fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The liability for Assessments or Charges may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments or Charges are made.



### **10.2 Default in Payment of Assessments for Common Expenses or Charges.**

Assessments 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 attorneys' fees, as well as costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. 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 the Act. 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. 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 attorneys' fees and costs as permitted by law. The notice requirements of this provision are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

**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, attorneys' fees and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law or elsewhere in the Condominium Documents, as the Board deems appropriate, without same constituting a waiver or election of remedies.

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

**10.6 Certificate of Unpaid Assessments or Charges.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments or Charges against him/her with respect to his/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.** Except as prohibited by law, there is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which are not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner insurance, 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 attorneys' fees, costs and expenses of collection.

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

**10.9 Other Remedies.** The Board 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 Unit and Limited Common Element Access.** The irrevocable right of access to each Unit and its appurtenant Limited Common Elements during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements or of any portion

of a Unit to be maintained by the Association pursuant to this Declaration, or as necessary to prevent damage to the Common Elements or to any Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. A pass key must be provided by the Unit Owner to the Association, if mandated by the Board of Directors, for each Unit entry door, and as may be applicable air conditioning or utility room or closet, and storage unit. The Association may utilize a master key system, if mandated by the Board of Directors. When a Unit Owner must maintain, repair or replace portions of the Condominium Property as provided herein, and which requires access to another Unit for said purpose, the Unit Owner shall have reasonable right of access which shall be administered through the Association. The Unit Owner upon whose behalf access has been obtained shall be obligated for the expense of repairing any damage to the Condominium Property.

**11.2 Assessments and Charges.** 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.

**11.3 Delegation.** The power to enter into contracts with others, for valuable consideration, for maintenance and management of the Condominium Property and Association Property and in connection therewith, 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 regarding the operation of the Association and use, appearance, maintenance, transfer and administration of the Condominium Property and Association Property.

**11.5 Acquisition or Transfer of Real or Personal Property; Leasing Common Elements and Association Property.** The power to acquire real property and transfer real property owned by the Association or otherwise convey and mortgage real property 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 acquire, purchase, or mortgage a Unit in connection with foreclosure of a lien or deed in lieu of foreclosure, nor to dispose of such Unit. No Unit Owner approval shall be required in connection with the Association's right of first refusal set forth in Article 16 hereof, nor to dispose of such Unit. 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. The Board of Directors shall have the authority to acquire personal property and to dispose of same, without need for membership approval.

**11.6 Fees for Use of Common Elements; Other Fees and Deposits.** The power to set fees, pursuant to the Act, 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: clubhouse/meeting room deposits, use fees and/or clean-up fees; fees for the issuance of parking passes or decals; fees for architectural/engineer review of renovation/alteration plans; contractor damage deposits; and

internet service, facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

**11.7 Lease of Association Property or Common Elements.** The power to lease Association Property or Common Elements, as authorized 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 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.

**11.8 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 damages of any nature, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by the acts or omissions of any third party, caused by progressive, latent or unknown condition of the Condominium Property, nor for any claims for damages or expenses affiliated with the maintenance and repair of the Condominium Property, except incidental damage to Owner property as provided in Article 9.1.3 hereof. The Association shall have no liability in any case for loss of use or inability to inhabit the Condominium Property during work performed by, or at the direction of the Association, when the Board of Directors reasonably believes the property cannot be safely occupied during said period(s) of time. Without limiting the intended generality of the foregoing, the Association shall have no liability for loss of use, loss of rental income, alternative housing or subsistence expenses, or loss of value.

**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, or user of any portion of the Condominium Property, including, without limitation, Guests, Tenants, Invitees or for any property of any such persons. Without limiting the generality of the foregoing:**

**11.8.1 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**

**11.8.2 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 for the prevention of tortious or criminal activities; and**

**11.8.3 Any provisions of the Condominium Documents setting forth the uses of Assessments which relate to health, safety and or welfare shall be interpreted and applied**

only as limitations on the uses of Assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if Assessment funds are chosen to be used for any such reason.

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

As used in this 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.

**11.9 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.** Each Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is conducive to the growth of mold and/or mildew. The Board 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 within certain temperature and/or humidity ranges and may require Owners to take such further actions as the Board deems advisable to control humidity and mold and/or mildew growth.

The Association 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, 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, OR ANY PERSON OR ENTITY THE ASSOCIATION IS OBLIGATED TO INDEMNIFY (AND WITHOUT WAIVING, REDUCING OR OTHERWISE MODIFYING COVERAGE OBLIGATIONS OR SUBROGATION RIGHTS OF ANY INSURER), ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED WITH INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH, RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR MILDEW OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM.**

**11.10 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:

**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 (including Limited Common Elements), the Units, and the personal property of the Association, for the replacement value thereof, including coverage for changes in building codes, unless the Board determines that such coverage for changes in building codes is not reasonably available or commercially practicable, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. The Association shall determine the replacement value of the Insurable Improvements through independent appraisal, as may be 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 may be 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 as may be required by the Act. 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 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 up to the limits available through the

National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related program, or through private carriers with similar coverage, for premium rates that are generally commensurate with flood insurance premium rates for condominiums in the local area.

**12.2.3 Liability Insurance.** The Association shall obtain and maintain 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 as may be provided for in 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 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 or covered cause of loss under the Association's applicable insurance policy, but insufficient proceeds for Casualty or covered cause of loss 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 or covered cause of loss under the Association's applicable insurance policy 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 that 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.

**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 termination plan approved pursuant to Article 18.



**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 or covered cause of loss under the Association's applicable insurance policy, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

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

**13.2 The Building.**

**13.2.1 Lesser Damage.** If the damage renders 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 or covered cause of loss under the Association's applicable insurance policy, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

**13.2.3 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original 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 Addition as described in Article 9.6, and no vote of the Unit Owners shall be required.

**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 or covered cause of loss under the Association's applicable insurance policy 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 prior to the Casualty or covered cause of loss, 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 or covered cause of loss under the Association's applicable insurance policy for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Article 13.5 below. 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 9.7, in which event the Unit Owner shall be charged for the costs of such activities (including attorneys' 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) of the Act. However, any cost of repair, reconstruction or replacement of portions of the Condominium Property that is not caused by a Casualty or covered cause of loss under the Association's applicable insurance policy, as determined by the Board of Directors, shall be repaired, and said costs allocated pursuant to the general maintenance, repair, and replacement provisions of this Declaration.

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

**13.7 Termination of Condominium if Not Reconstructed.** If the Owners vote not to reconstruct the Condominium by vote described in Article 13.2.2 hereof, the Condominium shall be terminated in accordance with the procedures set forth in Article 18 hereof.

**13.8 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:

**13.8.1** 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.

**13.8.2** To declare any portion of the Condominium Property or Association Property unavailable for occupancy by Owners, 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, Tenants, or Guests.

**13.8.3** 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.

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

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

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

**13.8.7** 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.

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

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

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

**14.1 Occupancy of Units.** No person may sleep overnight in a Unit or reside in a Unit.

**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 Unit Owners or Tenants, 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 Unit Owners and Tenants. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances. No noxious or offensive odors shall be permitted.

**14.3 Garbage.** All garbage, trash, waste, refuse or rubbish must be placed in appropriate trash cans or containers designed for that purpose. Tires and pallets may not be disposed of in the garbage receptacles located on the Common Elements. The only garbage/waste to be discarded in designated community garbage receptacles is waste generated in office materials. No job site waste material is to be discarded in designated community garbage receptacles, including a prohibition on discarding furniture, doors, windows, etc.

**14.4 Units.** Each Unit shall be used and occupied for commercial warehouse, storage, and related office and reasonably related commercial purposes, or for such other lawful purpose as may be approved by the Association, and shall be used only for purposes which are consistent with and appropriate to the design of the building, and for which adequate ventilation, plumbing, parking and similar and related facilities exist. Each business operating within a Unit must have a proper commercial license, as issued by the respective governmental entity.

**14.5 Common Elements.** The Common Elements shall be used only for the purposes for which they are intended in the furnishing of structure, access, services and facilities for the use of the Units.

**14.6 Signs, Advertising.** No Owner or Tenant of a Unit shall place or maintain any advertising matter visible from the exterior of his Unit, or install any sign, awning or canopy, decoration, lettering, or advertising matter or other thing of any kind on any exterior door, wall or window of the Common Elements or Limited Common Elements, without the written approval of the Association, through the Board of Directors. As a part of the Rules and Regulations described in Section 14.14, the Association may establish reasonable and uniform regulations permitting the placement and maintenance by each Owner, as to his individual Unit, of identifying signs and insignia of such size and materials and in such locations as shall be architecturally suitable and appropriate to the design and function of the building.

**14.7 Lawful Use.** No unlawful use shall be made of the Condominium Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of

governmental bodies for maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the property concerned.

**14.8 Pets.** No pets, animals, livestock, or poultry of any kind, including common household pets, shall be raised, bred or kept in any Unit or on the Common Elements at any time. No pets of any kind shall be permitted upon the Condominium Property at any time.

**14.9 Rental and For Sale Signs.** No signs advertising the rental or sale of Units or other signs of any nature may be posted on the Condominium Property, including building exteriors or doors and windows of the Units, without the prior written approval of the Association. "For Sale" or "For Rent" signs, not to exceed 24" by 24", may be attached to the window area of a Unit.

**14.10 Exterior Improvements.** No Unit Owner shall cause anything to be applied or attached to, hung, displayed or placed on the exterior walls, doors or windows of any building (including awnings, antennae, signs, screens, fixtures and equipment) without the prior written consent of the Association.

**14.11 Alterations.** No Unit Owner shall make, allow or cause to be made, any structural addition or alteration of his Unit or the Common Elements without the prior written consent of the Association, as provided elsewhere herein.

**14.12 Parking.** The following parking restrictions must be adhered to by all Unit Owners, Tenants, Residents and/or Guests:

(a) Automobiles, commercial vehicles, trucks and trailers shall fit within the respective parking spaces(s), may not obstruct ingress and egress of other vehicles and may not impair or prevent landscaping maintenance by the Association.

(b) Each Unit is allowed the exclusive right to park permitted vehicles in the striped parking space located in front of the garage door appurtenant to a respective Unit.

(c) The Board shall have the authority, but not the obligation, to assign parking spaces to Unit Owners, however, no Unit will be assigned or permitted to utilize more than three assigned exclusive parking spaces.

(d) No vehicular repair or maintenance shall be performed on the Condominium Property except for emergency repairs sufficient to either start or tow a vehicle therefrom.

(e) No vehicle may be parked in the outdoor parking areas for longer than three (3) days (i.e. more than 72 consecutive hours) and the Association shall have the right to remove a vehicle parked for longer than three (3) days (i.e. more than 72 consecutive hours).

(f) All vehicles parked on Condominium Property must be drivable.

(g) All vehicles parked on Condominium Property must not block other vehicles.

(h) All vehicles must be properly registered with the respective governmental entity.

(i) **Enforcement.** The cost of removal of any vehicle violating these provisions shall be charged as a special Assessment against the Owner causing or allowing, or whose Tenant caused for allowed, said vehicle to be parked. Unit Owners will be held responsible for any violation of the parking restrictions contained herein committed by their Tenant or Guest and, as a result, Unit Owners shall also be responsible to ensure that these parking restrictions are properly enforced and adhered to.

(j) **Additional Restrictions.** The Board of Directors shall have the right to adopt additional parking restrictions through amendments to the Rules and Regulations.

**14.13 Hurricane Shutters.** Units with hurricane shutters must install (close) the hurricane shutters after the issuance of a hurricane watch by the National Hurricane Center for an area encompassing the Condominium Property, and failure to do so will create a presumption of negligence.

**14.14 Rules and Regulations.** Reasonable rules and regulations concerning use of the Condominium Property ("Rules and Regulations") may be made and amended from time to time by the Board; the procedure for making and amending Rules and Regulations shall not be construed as amendments to this Declaration and need not be recorded in the public records to be effective. All Rules and Regulations shall be uniformly applied and enforced. Copies of Rules and Regulations and amendments thereto shall be furnished by the Association to all Unit Owners and Tenants of the Condominium upon request. The Board may require that all Tenants execute a document confirming that they have read the Rules and Regulations.

**14.15 Additional Restrictions.** Additional use, transfer and other restrictions are contained in 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, transfer and other restrictions are also contained elsewhere in the Condominium Documents.

**15. LEASING.** The lease of a Unit is defined as occupancy of the Unit by any person other than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, or any other exchange of value). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration. The term "Tenant" and "Lessee" shall likewise be used interchangeably. All leases must be in writing. Should a Unit Owner wish to lease his Unit, he shall furnish the Association with a copy of the proposed lease, the name of the proposed Lessee, the names of all proposed Tenants, and such other information as the Association may reasonably require. Any person occupying the Unit as a Tenant after initial approval shall be subject to a separate application and approval process. The Association shall have thirty (30) days from the receipt of notice and all required information within which to approve or disapprove of the proposed lease or proposed Lessees. The Association shall give the Unit Owner written notice of its decision within said period. "Rent-sharing" and subleasing are prohibited. A copy of the applicable business license must be provided to the Board of Directors within thirty (30) days of the commencement of the Lease. All leases shall be for a minimum period of one (1) year or 365 continuous days. Leases may be extended or renewed, subject to Board approval. No Unit Owner, nor anyone on their behalf, shall publish or cause to be published any advertisement of any type in

any form of media, including but not limited to television, radio, internet website, newspaper, magazine, or trade publication, that indicates that a Unit may be leased for anything less than the minimum period of one (1) year or 365 continuous days.

**15.1 Board Right of Approval.** The Board of Directors shall have the authority to approve or disapprove all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a Unit as a Tenant, or otherwise without prior approval of the Board of Directors. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed Tenant as the Board deems appropriate under the circumstances, including (but not necessarily limited to) the right to require a tenant to sign an addendum acknowledging that they are aware of the waste and parking restrictions. The Board may require an interview of any proposed Tenant of a Unit as a condition for approval.

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

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

(if requested by the Board), the Association shall have the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the Tenant interview (if required), by sending written notification to the Unit Owner within such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the Unit Owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed, or extended. The Association shall neither have a duty to provide an alternate Lessee nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

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

- (a) a capital, first or second degree felony involving violence to persons within the past ten (10) years; or
- (b) a first or second degree felony involving illegal drugs within the past ten (10) years; or
- (c) any drug offence involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, plea or release occurred; or
- (d) a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction, plea or release occurred;

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

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

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

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

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



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

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

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

**16. 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:

**16.1 Forms of Ownership.**

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

**16.1.2 Co-Ownership.** Co-ownership of Units may be permitted. No time share estates may be created. "Fractional Ownership" is prohibited.

**16.1.3 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.

**16.2 Transfers Subject to Approval.**

**16.2.1 Sale or Other Transfer.** No Unit Owner may dispose of a Unit or any interest in same by sale or other title transfer without prior written approval of the Board of Directors. No Unit Owner may dispose of a Unit or any interest therein by other means (including agreement for deed, installment sales contract, lease-option, or other similar transactions) without prior written approval by the Board of Directors.

**16.2.2 Gift.** If any Unit Owner is to acquire his title by gift, his ownership of his Unit shall be subject to the prior approval of the Board of Directors. Notice must be given at least thirty (30) days prior to the intended closing or title transfer date.

**16.2.3 Devise or Inheritance.** If any person shall acquire his title by devise, inheritance or through other succession laws, the continuance of his ownership of his Unit shall be subject to the approval of the Board of Directors.

**16.2.4 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 Board of Directors. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Unit before being approved by the Board of Directors under the procedures outlined below.

**16.3 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:

**16.3.1 Notice to Board of Directors.**

**16.3.1.1 Sale or Other Transfer.** A Unit Owner intending to make a bona fide sale or other title transfer of his Unit or any interest in it, including gifts, transfers to artificial entities, and the grant of partial estates, shall give to the Board of Directors notice of such intention, together with the name and address of the intended grantee, an executed copy of the purchase contract and its exhibits, or other documentation evidencing the transfer and such other information concerning the intended grantee and the transaction as the Board of Directors may reasonably require. The Board may require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references, and a personal interview with the purchaser(s).

**16.3.1.2 Devise or Inheritance.** A Unit Owner who has obtained his title by devise or inheritance, or operation of succession laws, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit Owner as the Board of Directors may reasonably require (including that set forth in Article 16.3.1.1 hereof), and a certified copy of the instrument evidencing the Owner's title.

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

**16.3.2 Approval by Association.**

**16.3.2.1 Sale or Other Title Transfer.** If the proposed transaction is a sale or other prospective title transfer, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by Board of Directors, the Board of Directors must either approve or disapprove the proposed transaction.

**16.3.2.2 Devise or Inheritance.** If the Unit Owner giving notice has acquired his title by devise, inheritance, or through succession law, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by the

Board of Directors, the Board of Directors must either approve or disapprove the continuance of the Unit Owner's ownership of his Unit.

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

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

**16.4.1.1** At the option of the Association 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 shared by the parties.

**16.4.1.2** The purchase price shall be paid in cash. The sale shall be closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within ten (10) days after the determination of the sale price if such is by arbitration, whichever is the later. If the Association shall fail to itself purchase the Unit, or provide a purchaser, or if a purchaser furnished by the Association or the Association shall default in his/their agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved, and the Association shall furnish a certificate of approval.

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

**16.4.2.1** The sale price shall be the fair market value determined by agreement between the grantor and grantee within thirty (30) days from the delivery or mailing of such agreement. In the absence of agreement as to price, or where transfers are made for less than bona fide value, the price shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two 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 shared by the parties.

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

**16.4.3 Disapproval for Good Cause.** Disapproval of title transfers or the continuation of ownership pursuant to this Article 16 shall be made by the Board of Directors if it is determined that the potential Unit Owner does not facially qualify for membership in the Association, or if the proposed transaction will result in a violation of the Condominium Documents. Only the following may be deemed to constitute good cause for disapproval on the grounds that the proposed purchaser does not facially qualify for membership in the Association or the proposed transaction will result in a violation of the Condominium Documents:

**16.4.3.1** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the Condominium Documents;

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

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

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

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

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

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

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

**16.4.3.5** The person seeking approval has a record of financial irresponsibility, including without limitation prior foreclosures or bad debts such that the Board

reasonably concludes that the applicant is unable to meet his financial obligations to the Association;

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

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

**16.4.3.8** The person seeking approval operates a business which (i) will require more than three business vehicles to be parked on Condominium Property, (ii) results in excessive noise (as determined by the Board of Directors) and/or (iii) results in excessive odors (as determined by the Board of Directors).

If the Board disapproves a transfer for good cause, the Association shall have no duty to purchase the Unit or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board.

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

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

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

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

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

**17.2 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."

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

**17.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of a majority of the total 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 a majority of the total Voting Interests. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, or conflicts between the Condominium Documents, may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

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

**17.6 Automatic Amendment.** Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration, the Board may operate the Association pursuant to the less stringent requirements without the need to change this Declaration. The Board of Directors, without a vote of the Owners, may also adopt by majority vote, amendments to this Declaration as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapter 617 (the Corporations Not For Profit Act), and the Act, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

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

## **18. TERMINATION.**

**18.1** The Condominium may be terminated in the following manner:

**18.1.1 Termination by Agreement.** The Condominium may be terminated by the agreement of eighty percent (80%) of the Voting Interests of the Association and eighty percent (80%) of the holders of record of liens affecting any of the Units, which agreement shall be evidenced by an instrument or instruments executed in the form required for execution of a deed.

The termination shall become effective when such agreement has been recorded in the public records.

**18.1.2 Termination by Destruction.** In the event that it is determined in the manner elsewhere provided in this Declaration that the Condominium Property shall not be reconstructed because of casualty damage or condemnation, the Condominium plan of ownership will be thereby terminated without agreement.

**18.1.3 Shares of Unit Owners After Termination.** Upon termination of the Condominium with or without agreement, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares, and the holders of mortgages and liens against the Unit or Units formerly owned by such Unit Owners shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be based upon the undivided ownership share in the Common Elements appurtenant to each Unit as set forth in Section 6 herein. All funds of the Condominium held by the Association at the date of termination except for the reasonably necessary expenses of winding up shall be disbursed to the Unit Owners and mortgagees as their interest may appear in the shares set forth in Section 6. The costs incurred by the Association in connection with a termination shall be a Common Expense.

**18.1.4 Partition or Sale Following Termination.** Following termination the Condominium Property

**18.1.5 Distribution of Proceeds.** The net proceeds of sale, insurance, or other liquidation of the Condominium Property following termination shall be distributed to the Unit Owners and their mortgagees, in accordance with the priority of interests in each Unit, in proportion to the undivided shares held by the Unit Owners as determined by Section 6 herein.

**18.1.6 Amendment.** This Section 18 shall not be amended without consent of all Unit Owners and all owners of mortgages required to approve termination by agreement.

## **19. CONDEMNATION.**

**19.1 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.

**19.2 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.

**19.3 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.

**19.4 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.

**19.5 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:

**19.5.1 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.

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

**19.5.3 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.

**19.6 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:

**19.6.1 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).

**19.6.2 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.

**19.6.3 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.



**19.7 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.

**19.8 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.

## **20. COMPLIANCE AND DEFAULT.**

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

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

**20.1.2 A Unit Owner;** or

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

**20.2 Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, Tenant, Guest, Invitee 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 attorneys' fee before trial, at trial and on appeal.

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

Documents, the Unit Owners and Association stipulate that injunctive or declaratory proceedings may also be pursued, if deemed appropriate to address a violation of the Condominium Documents.

## **20.4 Notice of Lien or Suit.**

**20.4.1 Notice of Lien.** A Unit Owner shall give written notice to the Association 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.

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

**20.4.3 Failure to Comply.** Failure of an Owner to comply with this Section 20.4 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

## **21. RIGHTS OF MORTGAGEES.**

**21.1 Mortgagee Protection Clause.** The following provisions are for the benefit of first mortgagees (and the holders of junior mortgages which holders are financial institutions) and to the extent these provisions conflict with any other provisions of this Declaration, these provisions shall control:

**21.1.1** All such mortgagees who have made written request and registered their names with the Association shall be given:

**21.1.1.1** written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association and prior to the effective date of any termination of any agreement for professional management of the Common Elements following a decision of the Owners to assume self-management of the Common Elements;

**21.1.1.2** immediate notice following any damage to the Common Elements whenever the cost of reconstruction exceeds Fifty Thousand Dollars (\$50,000.00), and as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Common Elements;

**21.1.1.3** notice after delinquency of more than sixty (60) days in payment of Assessments by the Owner of the Unit on which it hold a mortgage;

**21.1.1.4** timely notice of lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

**21.1.1.5** timely written notice prior to any proposed action which requires the consent of any percentage of mortgage holders.

**21.1.2** Any holder of a mortgage

**21.1.3** Unless at least eighty percent (80%) of first mortgagees (based upon one vote for each mortgage owned), and eighty percent (80%) of the Owners of Units (other than Declarant) have given their prior written approval, neither the Association, nor the Owners shall:

**21.1.3.1** Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Unit; or

**21.1.3.2** Amend this Declaration or the Articles of Incorporation or Bylaws of the Association in such a manner that the rights of any mortgagee will be directly and adversely affected.

**22. MISCELLANEOUS PROVISIONS.**

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

**22.2 Master Covenants.** All Owners of Units in Tollgate Business Park II Condominium shall be entitled and required to be members of Toll Gate Commercial Center Property Owners Association, Inc., a Florida not-for-profit corporation (the "Master Property"), pursuant to terms and conditions of the Master Covenants. The Master Association may make Assessments against its Members for its expenses, pursuant to terms and conditions of the Master Covenants, and those Members shall be obligated to pay such Assessments. The amount of such assessments is to be set by the Board of Directors of the Master Association. The Assessments of the Master Association may be collected by the Condominium Association, and included in the annual budget of the Condominium Association. Title to the Units created hereunder shall be taken subject to the Master Covenants, and any amendments thereto. Said Master Covenants, among other things, impose a burden and obligation upon the Condominium Property and other properties, for the maintenance and support of the Master Association. The votes allocated to the Condominium Property by the Master Association shall be cast by the Board of Directors of the Association.

**22.3 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.

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

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

**22.6 Compliance with Fair Housing Laws.** There shall be no limitation upon sale, lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin,

handicap, or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the Condominium premises, or to comply with other legal requirements.

**22.7 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.

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

**22.9 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.

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

**22.11 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: 11410378\_1

**AMENDED AND RESTATED**  
**ARTICLES OF INCORPORATION**  
**OF**  
**TOLLGATE BUSINESS PARK II CONDOMINIUM ASSOCIATION, INC.**  
  
**SUBSTANTIAL REWORDING OF ARTICLES OF INCORPORATION –**  
**SEE CURRENT ARTICLES OF INCORPORATION FOR PRESENT TEXT**

These are the Amended and Restated Articles of Incorporation of Tollgate Business Park II Condominium Association, Inc., originally filed with the Florida Department of State on the 19<sup>th</sup> day of May 2005, under Charter Number N05000005252. Amendments included have been added pursuant to Chapter 617, Florida Statutes (2018).

The name and address of the current registered office is Becker & Poliakoff, P.A., 4001 Tamiami Trail N., Suite 410, Naples, Florida 34103. The Board of Directors may, from time to time, change the designation of the principal office, the mailing address of the corporation, the registered office and the registered agent, in the manner provided by law.

**1. NAME.** The name of the corporation is TOLLGATE BUSINESS PARK II 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 Tollgate Business Park II 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 set forth in the Act except as limited by the Declaration, these Articles, and the Bylaws (all as amended from time to time),

and all of the powers reasonably necessary to operate the Condominium including but not limited to the following:

**4.2.1** To make and collect Assessments 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 Association and the operation of the Condominium.

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

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

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

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

**4.3 Condominium Property.** All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit 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. This provision shall not apply to the distribution of insurance proceeds as provided in the Declaration, nor the distribution of proceeds affiliated with termination or condemnation, as provided in the Declaration and the Act, nor reimbursement for expenses as may be authorized by the Board.

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

**5. MEMBERS.** The Members of the Association 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. If transfer of a Unit has occurred without approval of the Association, and if in contravention of the provisions of the Declaration, the Association need not recognize a record Owner as the "Member," unless the Association chooses to ratify or waive its objection to the transfer of title.

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

**5.2 Voting.** On all matters upon which the membership 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 and such Voting Interests shall be subtracted from the required number of votes when calculating any required vote or quorum for the period during which such suspension exists.

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

**6. TERM OF EXISTENCE.** The Association 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 or under the direction of the Board of Directors, as provided in the Bylaws, subject only to approval by Members when such approval is specifically required.

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

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

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

**10.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of a majority of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of a majority of the entire Voting Interests. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, or conflicts between the Condominium Documents, 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 Automatic Amendment.** These Articles shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration. Whenever the Act, Chapter 617, Florida Statutes or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Articles, the Board may operate the Association pursuant to the less stringent requirements without the need to change these Articles. The Board of Directors, without a vote of the Members,



may also adopt by majority vote, amendments to these Articles of Incorporation as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and the Act, 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.** No amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such Unit shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

## **11. INDEMNIFICATION.**

**11.1 Indemnity.** The Association shall indemnify any Officer, Director, or Committee Member who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director, Officer, or Committee Member of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him 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 failed to 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. In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association.

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

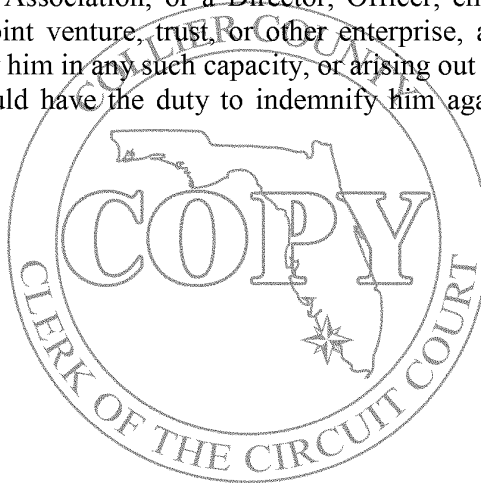
**11.3 Advances.** Reasonable expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or Committee Member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 11. However, if the

Board, by majority vote, determines that the person seeking advancement did not act in good faith or in a manner he 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, the Association shall not be obligated to pay for any expenses incurred prior to the final disposition of the subject action.

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

**11.5 Insurance.** The Association 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.

ACTIVE: 11410565\_1



**AMENDED AND RESTATED**  
**BYLAWS**  
**OF**  
**TOLLGATE BUSINESS PARK II CONDOMINIUM ASSOCIATION, INC.**

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

**1. IDENTITY.** These are the Amended and Restated Bylaws (hereinafter "Bylaws") of Tollgate Business Park II Condominium Association, Inc., a Florida not-for-profit corporation formed for the purpose of administering Tollgate Business Park II, A Condominium (hereinafter "the Condominium") which is located at 3845 Beck Road, Naples, Florida 34114, 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 such location, 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.** A corporate seal for the Association may 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, whether capitalized or not, shall have the same meaning to the extent applicable, and except where the context would otherwise suggest, as set forth in the Articles of Incorporation for the Association, the Declaration of Condominium and the Florida Condominium Act, Chapter 718, Florida Statutes (the "Act"), all as amended from time to time.

**2. MEMBERS' MEETINGS.**

**2.1 Annual Meetings.** Annual Members' meetings shall be held at such convenient location as 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 the Board of Directors, and shall be called by the President or Secretary within

a reasonable time of receipt of written notice from twenty-five percent (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 ten percent (10%) of the Voting Interests of the Association who shall give notice of the meeting, stating the purpose of the meeting, pursuant to Section 718.112(2)(j) of the Act.

**2.3 Notice of Members' Meetings.** Notice of all Members' meetings, stating the time, place, and purpose(s) of the meeting, shall be sent to each Member by U.S. regular mail, unless waived in writing, at least fourteen (14) days prior to the meeting as to annual meetings and ten (10) days as to special meetings. The Association shall only be obligated to mail or deliver notice to one location, no matter how many persons own a Unit, and no matter how many other residences such Owner may have. In the absence of written direction to the contrary, notices will be given to the address of the Unit. Hand delivery and electronic notice of membership meetings is permissible. Officers required to give notice may delegate the actual giving of notice to another person, such as an Assistant Officer or managing agent. Any Members' meeting or election at which one or more Directors are to be elected must be noticed as provided for in Article 2.4 next following. An Officer of the Association or other person providing notice shall execute an affidavit of mailing, which shall be retained in the official records of the Association as proof of such mailing. The notice of the annual meeting shall include an agenda for all known substantive matters to be discussed, or have such an agenda attached to it. A copy of the notice and agenda for the annual meeting shall be posted at a conspicuous location, designated by Board resolution, on the Condominium Property at least fourteen (14) days in advance of the meeting.

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

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

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

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

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

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

**2.5 Quorum/Voting.** A quorum at Members' meetings shall consist of persons entitled to cast thirty-five percent (35%) of the Voting Interests of the entire membership. Those Members whose voting rights are suspended pursuant to the terms of the Condominium Documents and/or Florida law shall be subtracted from the required number of votes in any calculation for purposes of determining whether a quorum is present during the period of suspension. Such Voting Interests shall likewise be subtracted from the required number of votes when calculating any required vote as set forth in the Condominium Documents or the Act. Decisions made by a majority of the Voting Interests present and voting, in person or by proxy, at a meeting at which a quorum is present, shall be binding and sufficient for all purposes except such decisions as may by the Act or the Condominium Documents require a larger percentage, in which case the percentage required in the Act or the Condominium Documents shall govern. To the extent lawful, Members 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 Member 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 the Act. Whenever a Unit owned by the Association is ineligible to vote due to the provisions of the Act and these Bylaws, the Voting Interest attributable to that Unit shall be subtracted from the required number of votes when calculating any required vote for quorum for the period during which the Association owns the Unit.

**2.6 Indivisible Vote.** 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 grantor or trustee of a trust shall be entitled to vote. If a Unit is owned by a limited liability company, any member, manager or officer may vote on behalf of the limited liability company. Any person with bona fide apparent authority asserting the right to vote on behalf of a Unit owned by an artificial entity shall be presumed to be entitled to vote on behalf of said Unit, unless the Unit has filed voting instructions with the Association designating some other person entitled to vote or if the Association has reasonable cause to believe such person is not eligible to vote. If multiple Owners or non-individual Owners of a Unit cannot agree on how a vote is to be cast, the vote shall not be counted as to the issue upon which disagreement exists. Voting certificates are not necessary. No individual may cast a vote assigned to a Unit where the

voting rights assigned to the Unit are suspended pursuant to the terms of the Condominium Documents and/or Florida law.

**2.7 Voting/Proxies.** Votes may be cast in person or by proxy. Members and proxyholders may participate in Association meetings via telephone conference, or other means of remote participation, if permitted by the Association. Absent a resolution of the Board to the contrary, the President of the Association 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, or other means of remote participation. In order for a proxyholder to participate telephonically or remotely in an Association meeting, a copy of the proxy must be provided to the Association prior to the start of the meeting. Only Members or the spouse of a Member may be delegated (including through use of a Power of Attorney) 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 ninety (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 the Act requires or permits a vote of the Members. No proxy, limited or general, shall be used in the election of Board Members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. A photographic, photostatic, facsimile, electronic or equivalent reproduction of a signed proxy is a sufficient proxy. Owners may retroactively cure any alleged defect in a proxy by signing a statement ratifying the Owner's intent to cast a proxy vote. The use of proxies is to be liberally construed.

**2.8 Adjournment.** If any meeting of Members cannot be convened because a quorum is not present, or if insufficient Voting Interests are represented to approve a proposed item of Association business, or in any case where a majority of the Voting Interests present (in person or by proxy) so agree, the Members who are present (either in person or by proxy) may adjourn the meeting from time to time until a quorum is present, or enough votes can be cast to decide a question, or the meeting can be reconvened consistent with the intention of the Members in their approval of the adjournment.

**2.9 Order of Business.** The agenda and 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);

2.9.3 Appointment by the President (or chairman) 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, if any;

2.9.8 Reports of Officers, if any;

2.9.9 Reports of Committees, if any;

2.9.10 Disposal of voting items included by Board in meeting materials, if any;

2.9.11 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. No more than one natural person may represent any one Unit on the Board at any given time. When a Unit is owned by a corporation, a partnership, limited liability company or similar entity, an authorized representative from this entity (e.g. partner, etc.) shall be eligible for Board membership. Grantors, trustees and beneficiaries of trusts (provided that the beneficiaries reside in the Unit), and the spouses of such persons, shall be eligible for Board membership. If a grantor, trustee or beneficiary of a trust, or the spouse of such person, seeks candidacy (and is not identified on the deed to the Unit as the grantor, trustee or beneficiary of the trust), a copy of the trust document, affidavit of trust or abstract of trust prepared by a licensed attorney must be provided to the Association at least thirty-five (35) days prior to the date of the annual meeting. The trust document can be redacted to keep financial information confidential; however, the document must clearly indicate the grantor, trustee and the beneficiaries of the trust. A person who has been convicted of any felony in this

State or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction that would be considered a felony if committed in this State, is not eligible to serve on the Board, unless such felon's rights have been restored for a period of at least five (5) years as of the date on which such person seeks election to the Board. A person who has been suspended or removed by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to the Act, or who is more than ninety (90) days delinquent in the payment of any monetary obligation is not eligible for Board membership. All Directors will be elected for a two (2)-year term. It is the intention of these Bylaws that a staggered Directorate be maintained. To maintain a staggered Directorate, the Board may hold seats in future elections open for one or two-year terms, when necessary or appropriate. In any election where candidates are elected for different terms, those candidates receiving the higher number of votes shall be elected to the lengthier term. In the event that there is no election, such as in a case where there are fewer pre-qualified candidates than open seats, the Directors who are seated shall agree amongst themselves which shall serve the two-year terms and which shall serve the one-year terms. This decision shall be recorded in the minutes of a duly noticed Board of Directors' meeting. In the event the Directors cannot agree on which among them shall serve the lengthier and shorter terms, the Board shall hold a "run-off" election, wherein those receiving the most votes will be elected to a lengthier term. The term of each Director's service shall extend until their elected term is completed. Resignations of Directors are effective when received by the Association in writing, unless a later date is stated. In the event a resignation is to take effect at a later date, the resigning Director shall remain on the Board until the effective date of the resignation and may, during this time, vote on all matters before the Board including, but not limited to, any vote to appoint a replacement Director created by his resignation.

**3.2 Board Vacancies.** Except as provided in Article 3.1, vacancies on 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, unless the Board votes to have the vacancy filled by a special election of the Members. When a Director has been recalled by the membership, the vacancy created by his 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.

**3.3 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.

**3.4 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 (2) days prior to the day named for such meeting.

**3.5 Special Meetings.** Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of any two (2) Directors. Not less than



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

**3.6 Waiver of Notice.** Any Director may waive notice of a meeting 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.

**3.7 Notice to Owners of Board Meetings.** Notice of meetings, which notice shall specifically include an agenda, shall be posted conspicuously, as provided in Article 2.3 of these Bylaws, at least forty-eight (48) continuous hours in advance of the meeting for the attention of Members, except in an emergency. If closed circuit television is available, the Board may use same for posting notices, as permitted by law. Meetings at which a regular monthly or quarterly Assessment or special assessment is to be considered shall specifically state: (1) that Assessments will be considered and the nature, estimated cost, and (2) description of the purpose for such Assessments. Further, written notice of any meeting at which non-emergency special assessments, or at which amendment to rules regarding Unit-use will be considered, or where the Board will establish the deductible feature of the Association's insurance policies, shall be mailed or delivered (including electronic delivery as provided by law) to the Members and posted conspicuously, as provided in Article 2.3 of these Bylaws, not less than fourteen (14) continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the person giving notice, where required by law, and shall be filed among the official records of the Association.

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

**3.9 Board Meetings, Quorum, and Voting.** The designation of the agenda for Board meetings shall be at the discretion of the President. However, the President shall be obligated to include any item on the agenda for a Board meeting, if requested reasonably in advance and in writing, by two (2) Board Members, and where required due to petition from twenty percent (20%)

of the Voting Interests. A quorum at Directors' Meetings shall consist of a majority of the number of required Directors. The acts approved by a majority of the Board 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). 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, or if a quorum exists and a majority of the Directors so approve, the Director(s) present may adjourn the meeting from time to time until a quorum is present, and no further notice need be given except for announcement at the meeting as to the date, time, and place of the adjournment. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum or counted as official votes for the Board's meeting. Directors may participate telephonically or remotely in Board meetings, as provided by law.

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

**3.11 Director Compensation.** Directors 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 of the Association existing under the laws of Florida generally, Florida Not For Profit Corporation Statute, the Condominium Act, and the Condominium Documents, all as amended from time to time, shall be exercised exclusively by or under the direction of the Board of Directors, or a duly authorized Board member, Officer, Committee member, agent, contractor, or employee, when said powers or duties have been delegated by the Board, subject only to the approval by Members when such is specifically required. In the event of a question or dispute whether a Board power has been properly delegated, the Board may ratify such action at a duly noticed meeting of the Board, and such ratification shall relate back to the act in question unless otherwise specified by the Board. The powers of the Directors shall include, but 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 the Association's 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, policies, and resolutions pertaining to the operation of the Association, subject to any limitations contained in the Declaration.

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

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

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

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

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

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

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

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

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

**4.14 To Enter Into Contracts for Products and Services.** All contracts for the purchase, lease, or renting of materials or equipment, or which are not to be fully performed within

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

**4.15 To Levy Fines and Suspend Rights.** The Directors may, pursuant to the Act, impose fines not to exceed the maximum permissible by law, and/or suspend the right to use Common Elements, common facilities, or any other Association Property, as permitted by the Act, for failure of the Owner of the Unit or any Tenant, Guest, Licensee, or Invitee to comply with the provisions of the Board policies and resolutions, the Condominium Documents, including the Rules and Regulations, and applicable laws.

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

**4.15.2** The Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be imposed (if different from the Unit Owner), shall be afforded an opportunity for hearing by being given notice of not less than twenty (20) days. Notice shall be effective when mailed by U.S. mail, certified, return receipt requested, to the address of the Member 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 Unit Owner and, if applicable, the party against whom the fine and/or suspension is sought to be imposed (if different from the Unit Owner), shall 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

considered by the Association. The hearing shall be held before a Committee of at least three (3) Members appointed by the Board, who are not Officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an Officer, Director or employee. If the Committee does not confirm the fine and/or suspension, the fine and/or suspension may not be imposed. If the proposed fine or suspension is approved by the Committee, the fine payment is due five (5) days after the date of the Committee meeting at which the fine is approved. Should the Association be required to initiate legal proceedings to collect a duly imposed fine or enforce a duly imposed suspension, the prevailing party in an action to collect said fine shall be entitled to an award of costs and a reasonable attorneys' fee incurred before trial (including in connection with the preparation for and conduct of fining and/or suspension hearings), at trial, and on appeal. Members shall be jointly and severally liable for the payment of fines imposed against and/or suspension imposed upon Tenants, Guests, Licensees and Invitees.

**4.16 To Appoint Committees.** The Directors may appoint Committees and delegate to such Committees those powers and duties of the Association as the Board deems advisable. All Committees and Committee Members shall serve at the pleasure of the Board. Committees of the Association, as defined in the Act, 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 Plumbing and 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. The Directors also have the right, but not necessarily the obligation, to inspect water meters, plumbing line alterations and fire protection equipment.

**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 Member's agreement to execute appropriate documentation regarding same.

**4.19 To Exercise Emergency Powers.** In the event of any emergency, as defined in Article 4.19.10 below, the Board of Directors may exercise the emergency powers described in this Article, and any other emergency powers authorized by Section 617.0207, Florida Statutes, Section 617.0303, Florida Statutes, and the Act, 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.

**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 Article to further the ordinary affairs of the Association shall bind the Association; and shall have the rebuttable presumption of being reasonable and necessary.

**4.19.6** The Board may use reserve funds to meet Association needs and may use reserve funds as collateral for Association loans. 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 Article 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;
- 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 Members, 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 Association may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage and pledge of all or any of its property, franchises, Assessments, special assessments, income or rights.

## **5. OFFICERS.**

**5.1 Executive Officers.** The executive Officers of the Association shall be the President, one or more Vice Presidents, a Secretary and a Treasurer, all of whom shall be elected annually by and from the Board of Directors, and who may be peremptorily removed by a majority vote of the Directors at any meeting. Any person may hold two (2) or more offices except that the President shall not also be the Secretary. The Board of Directors may also appoint such Assistant Officers as may be desired. 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 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 attorneys' fees and appellate attorneys' 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 failed to 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. In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association.

**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 Article 6.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

**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. However, if the Board, by majority vote, determines that the person seeking advancement 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, the Association shall not be obligated to pay for any expenses incurred prior to the final disposition of the subject action.

**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.

**7. MINUTES AND INSPECTION OF RECORDS.** Minutes of all meetings of Members 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 the Act, shall be available for inspection by Members and Board Members at all reasonable times. Provided, however, that the Directors may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and any copying.

## **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 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 (if any), and interior pest control, all of which are declared to be Common Expenses under these Bylaws. The proposed budget shall include reserves, pursuant to the Act, the funding of which may be waived or reduced by a vote of a majority of the Voting Interests 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 or delivered to each Member as provided in Article 8.2 hereof.

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

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

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

**8.3 Assessments.** The annual shares of the Units of the Common Expenses shall be made payable in installments due monthly or quarterly (as determined by the Board) in advance and shall become due on the first day of each such period and shall become delinquent ten (10) days thereafter. No invoice need be sent by the Association, although the Association may do so. 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 mailed or delivered to each Member and posted 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 Members 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 Members. Such roll shall indicate for each Unit the name and address of the Owner, and the Assessments and Charges paid and unpaid. A certificate made by a duly authorized representative of the Association or by the Board 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 Member shall be liable for all Assessments and Charges coming due while the Owner of a Unit, and such Member and Member's grantees or successors, after a conveyance or other transfer of title, 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 shall be liable for such Unit's unpaid Assessments, Charges, or share of the Common Expenses which became due prior to acquisition of such mortgagee's title as provided in the Act. Such mortgagee or its successors and assigns are liable for all Assessments and Charges accruing after their taking of title.

**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 attorneys' fees for collection, including appeals, shall be secured by a continuing lien upon the Unit.

**8.8 Lien for Charges.** Unpaid Charges due to the Association together with costs, interest, late fees, expenses and reasonable attorneys' 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 (10) days after the date due shall not bear interest, but all sums not paid on or before ten (10) days after the due date shall bear interest at the highest rate permitted by law from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of twenty-five dollars (\$25.00) or five percent (5%) of each installment of the Assessment for which payment is received

more than ten (10) days after the date due, 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 attorneys' fees incurred, and then to the Assessment payment first due.

Except as otherwise provided in 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 the Act.

**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 attorneys' 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 attorneys' fees have been paid in full. The Association must deliver or mail by certified mail to the Member 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 insurance, provided that such insurance is backed by the full faith and credit of the United States of America. All deposits shall be within the limits of such insurance. Principal of Association funds, whether reserves or operating funds, may not be placed at risk for investment purposes. Withdrawal of money from those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors or by electronic transfer protocols approved by the Board of 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, 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, 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, as amended from time to time, and with the Act.

**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 general, non-binding 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. The failure or alleged failure to adhere to Robert's Rules of Order shall not be used as a basis to legally challenge any action of the Association.

**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, the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

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

**10.4 Adoption of Amendments.** A resolution for the adoption of a proposed amendment may be adopted by a vote of a majority of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of a majority of the entire Voting Interests. Amendments correcting errors, omissions, scrivener's errors, violations of applicable law, or conflicts between the Condominium Documents, 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 or the Articles of Incorporation. Whenever the Act, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Bylaws, the Board may operate the Association pursuant to the less stringent requirements without the need to change these Bylaws. The Board of Directors, without a vote of the Owners, may also 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 the Act, 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.** No amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's proportionate share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such Unit shall join in the execution of the amendment, and all other Members approve the amendment.

## **11. DISPUTE RESOLUTION.**

**11.1 Mandatory Arbitration.** If unresolved, disputes between the Board and Members, as defined in the Act, must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation, so long as the Act requires such arbitration.

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

**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, Articles of Incorporation, these Bylaws, the Rules and Regulations of the Association and the Plat. In the event of a conflict between the language in the Declaration and the Plat, the Plat shall control, except as provided in Article 1.15 of the Declaration. In the event of a conflict between language in any of the other Condominium Documents, the following priorities shall control:

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 provision of these Bylaws is deemed invalid, the remaining provisions shall be deemed in full force and effect.

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