

1 **PROPOSED SECOND AMENDED AND RESTATED**
2 **DECLARATION OF CONDOMINIUM**
3 **OF**
4 **BONITA PINES CLUB, INC., A CONDOMINIUM**

5 **SUBSTANTIAL REWORDING OF AMENDED AND RESTATED DECLARATION OF**
6 **CONDOMINIUM - SEE CURRENT AMENDED AND RESTATED DECLARATION OF**
7 **CONDOMINIUM FOR PRESENT TEXT**

8 **RECITALS:**

9 In a Declaration of Condominium recorded at O.R. Book 1346, Page 310 *et seq.*, of the Public
10 Records of Lee County, Florida, on May 1, 1979 (“Original Declaration”), the Developer did submit
11 to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium
12 Act that property situated in Lee County, Florida, more particularly described as follows:

13 BLOCK 12, BONITA SPRINGS GOLF & COUNTRY CLUB UNIT 2, ACCORDING TO THE
14 PLAT THEREOF RECORDED IN P.B. 30 PAGES 128-132, PUBLIC RECORDS OF LEE
15 COUNTY, FLORIDA, LESS AND EXCLUDING:

16 FROM THE SOUTHEAST CORNER OF SAID LOT 12, RUN NORTH 0 11’ 13” EAST A
17 DISTANCE OF 217.39 FEET; THENCE SOUTH 86°56’07” WEST A DISTANCE OF 222.20
18 FEET; THENCE NORTH 83°38’47” WEST A DISTANCE OF 534.00 FEET; THENCE NORTH
19 76°38’47” WEST A DISTANCE OF 75.79 FEET; THENCE SOUTH 6°47’44” EAST FOR A
20 DISTANCE OF 371.23 FEET; THENCE NORTH 83°41’05” EAST A DISTANCE OF 786.48
21 FEET TO THE POINT OF BEGINNING.

22 Said Declaration or the exhibits thereto were subsequently amended or supplemented as follows:

23 Amendment recorded at O.R. Book 1382, Page 2059 *et seq.*, of the Public Records of Lee
24 County, Florida;

25 Amendment recorded at O.R. Book 1406, Page 2127 *et seq.*, of the Public Records of Lee
26 County, Florida;

27 Assignments of Parking Spaces recorded at O.R. Book 1430, Page 242 *et seq.*, of the Public
28 Records of Lee County, Florida;

29 Amendment recorded at O.R. Book 1484, Page 1786 *et seq.*, of the Public Records of Lee
30 County, Florida;

31 Amendment recorded at O.R. Book 1502, Page 944, of the Public Records of Lee County,
32 Florida;

33 Amendment recorded at O.R. Book 1579, Page 571, of the Public Records of Lee County,
34 Florida;

1 Assignments of Parking Spaces recorded at O.R. Book 1579, Page 572 of the Public
2 Records of Lee County, Florida;

3 Amendment recorded at O.R. Book 1771, Page 2003 *et seq.*, of the Public Records of Lee
4 County, Florida;

5 Amendment recorded at O.R. Book 1885, Page 2955, of the Public Records of Lee County,
6 Florida;

7 Amendment recorded at O.R. Book 1957, Page 676 *et seq.*, of the Public Records of Lee
8 County, Florida;

9 Amendment recorded at O.R. Book 1957, Page 683 *et seq.*, of the Public Records of Lee
10 County, Florida;

11 Amendment recorded at O.R. Book 2042, Page 4386 *et seq.*, of the Public Records of Lee
12 County, Florida;

13 Amendment recorded at O.R. Book 2262, Page 3643 *et seq.*, of the Public Records of Lee
14 County, Florida;

15 Amendment recorded at O.R. Book 2315, Page 2593 *et seq.*, of the Public Records of Lee
16 County, Florida;

17 Amendment recorded at O.R. Book 2471, Page 2842 *et seq.*, of the Public Records of Lee
18 County, Florida;

19 Amendment recorded at Instrument No. 2006000437367, of the Public Records of Lee
20 County, Florida;

21 Amendment recorded at Instrument No. 2007000043840, of the Public Records of Lee
22 County, Florida;

23 Amendment recorded at Instrument No. 2008000034225, of the Public Records of Lee
24 County, Florida (First Amended and Restated Condominium Documents);

25 Amendment recorded at Instrument No. 2014000071406, of the Public Records of Lee
26 County, Florida; and

27 Amendment recorded at Instrument No. 2014000071407, of the Public Records of Lee
28 County, Florida.

29 The submission of the land to the condominium form of ownership by the Original Declaration
30 and its amendments or supplements remains effective. No recorded easements to or from third
31 parties or other binding agreements of record or in existence are intended to be impaired or altered

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1 by the recording of this Second Amended and Restated Declaration of Condominium
2 (“Declaration”). By adoption of this Declaration, the Association Members hereby adopt certain
3 amendments to the Amended and Restated Declaration of Condominium and amendments thereof
4 and restate the Declaration in its entirety. By adoption of this Declaration, the Members of the
5 Association ratify governance of the Condominium Property under the condominium form of
6 ownership and the provisions of the Condominium Act, as defined in Article 1.1 of this
7 Declaration.

8 **1. DEFINITIONS.** As used in this Declaration or elsewhere in the Condominium
9 Documents, unless otherwise provided, and regardless of whether capitalized or not, the terms
10 used are as defined in the Act and as set forth below:

11 **1.1 “Act” or “Condominium Act”** means, except where specifically stated to the
12 contrary, the Florida Condominium Act (Chapter 718, Florida Statutes), as it now exists or as it
13 may be amended from time to time, including the definitions therein contained.

14 **1.2 “Articles”** means the Articles of Incorporation attached as Exhibit “B,” as may be
15 amended from time to time.

16 **1.3 “Assessment”** means a share of the funds required for the payment of Common
17 Expenses, which from time to time is assessed against the Units.

18 **1.4 “Association”** means BONITA PINES CLUB, INC., a Florida Corporation Not for
19 Profit, the entity responsible for the operation of the Condominium.

20 **1.5 “Association Property”** means all property owned by the Association for the use
21 and benefit of the Unit Owners.

22 **1.6 “Board of Directors” or “Board” or “Directors”** means the representative body
23 which is responsible for the administration of the Association’s affairs, and which is the same body
24 that is sometimes referred to in the Condominium Act as the “Board of Administration.”

25 **1.7 “Building”** means the structures in which the Units and portions of the Common
26 Elements are located.

27 **1.8 “Bylaws”** mean the Bylaws of the Association attached as Exhibit “C,” as may be
28 amended from time to time.

29 **1.9 “Casualty”** for the purposes of this Declaration, and not for the purpose of
30 construing coverage between any insurer and insured, means an event which causes damage to the
31 Condominium Property due to some sudden, fortuitous cause, whether natural or man-made,
32 including (but not limited to) fire, flood, tidal surges and waves, hail, wind, rain, vandalism, acts
33 of terrorism or civil unrest, explosion, or bursting pipes, but does not include progressive decay or
34 corrosion, or slow or continuous leaks.

1 **1.10 “Charge”** means any legal or equitable indebtedness or monetary obligation of a
2 Unit Owner to the Association, or other sums owed to or due to the Association from a Unit Owner,
3 or any cost or expense incurred by the Association on behalf of or because of a Unit Owner, other
4 than Assessments for Common Expenses, which the Unit Owner is obligated to pay to the
5 Association. Said obligations may arise by oral or written contract, by law or in equity, or may be
6 created by these Condominium Documents.

7 **1.11 “Committee”** means a group of Board members, Unit Owners, or Board members
8 and/or Unit Owners and/or other Persons appointed by the Board to make reports or
9 recommendations to the Board, to take action on behalf of the Board, or to take such actions as the
10 Resolution creating the Committee, or the Directors of the Board, may dictate.

11 **1.12 “Common Elements”** means and includes:

12 **1.12.1** The portions of the Condominium Property not included within the Units.

13 **1.12.2** Easements through Units for conduits, ducts, plumbing, wiring and other
14 facilities for the furnishing of Utility and other services to Units and the Common Elements.

15 **1.12.3** An easement of support in every portion of a Unit that contributes to the
16 support of a Building, including, but not limited to, all load bearing interior walls within the Units.

17 **1.12.4** The property and installations required for the furnishing of Utility Services
18 and other services to more than one (1) Unit or to the Common Elements.

19 **1.12.5** Any other parts of the Condominium Property designated as Common
20 Elements in this Declaration.

21 **1.13 “Common Expenses”** means those expenses for which Unit Owners are liable to
22 the Association, including, but not limited to, expenses of administration, maintenance, operation,
23 repair, and replacement of Common Elements, and such other expenses as may be declared
24 expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the
25 Association. Bulk interior pest control for Units, if provided by the Association is a Common
26 Expense. Common Expenses include, but are not limited to, such items as cost of premiums for
27 property and public liability insurance, repairs, replacements and expenses of upkeep, lawn
28 service, utility bills and governmental services (including, but not limited to, water, sewer,
29 electricity and trash collection) that are not separately metered or billed to individual Units, pool
30 service, recreational facilities and activities, janitor service, accounting and legal fees, wages and
31 fees for managerial and other services, and reasonable and adequate reserves, all as may be
32 required in the maintenance and management of this Condominium. The expenses of
33 Communications Services are specifically considered a Common Expense, if so designated by the
34 Board. Common Expenses also include reasonable insurance for Directors and Officers, road
35 maintenance and operation expenses, and security services, which are reasonably related to the
36 general benefit of the Unit Owners even if such expenses do not attach to the Common Elements

1 or Condominium Property. Common Expenses also include the expenses of any items or services
2 required by any federal, state, or local governmental entity to be installed, or supplied to the
3 Condominium Property by the Association, including, but not limited to, fire safety equipment or
4 water and sewer service where a master meter services the Condominium, and where said services
5 are not separately metered to the Units. Common Expenses also include maintenance of property
6 outside of the Condominium Property, and participating in governmental proceedings or otherwise
7 contesting the development or use of property outside the Condominium Property, where the
8 Board finds a nexus to the value of Units in the Condominium.

9 **1.14 “Common Surplus”** means the excess of all receipts of the Association, including,
10 but not limited to, Assessments, rents, profits and revenues on account of the Common Elements,
11 above the amount of the Common Expenses. Common Surplus shall be owned in the same
12 undivided percentages as Common Elements are owned.

13 **1.15 “Communications Services”** means those services described in Section 202.11,
14 Florida Statutes (2021), and for the purpose of this Declaration, includes but are not limited to,
15 bulk video, voice, or internet services.

16 **1.16 “Condominium Documents”** means this Declaration; the Plats, which are
17 described above and incorporated as part of this Declaration by reference, attached as Exhibit “A;”
18 Articles of Incorporation of Bonita Pines Club, Inc. attached as Exhibit “B;” Bylaws attached as
19 Exhibit “C;” Assignment of Parking Spaces attached as Exhibit “D;” and Rules and Regulations.
20 The Rules and Regulations need not (but may) be recorded in the Public Records of Lee County,
21 Florida, in order to be valid.

22 **1.17 “Condominium Parcel”** means a Unit together with the undivided share in the
23 Common Elements which is appurtenant to said Unit and when the context permits, the term
24 includes all of the appurtenances to the Unit.

25 **1.18 “Condominium Property”** means the land and property interests subjected to
26 condominium ownership under this Declaration, all improvements on the land as depicted in the
27 Surveyor’s Plat, or replacement thereof of like kind and quality, and alterations or additions made
28 to the Common Elements or Association Property by the Association and all easements and rights
29 appurtenant thereto intended for use in connection with the Condominium. Additions or alterations
30 made to the Units or Common Elements by Unit Owners (or their predecessors in title) are not part
31 of the Condominium Property. References in the Condominium Documents to Condominium
32 Property includes Association Property, unless specifically indicated otherwise.

33 **1.19 “County”** means the County of Lee, State of Florida.

34 **1.20 “Declaration” or “Declaration of Condominium”** means this instrument, and as
35 it may be amended from time to time.

36 **1.21 “Family” or “Single Family”** means any one (1) of the following:

1 **1.21.1** One (1) natural person, his or her spouse, if any, and his, her, or their parent,
2 grandparent, adult children, custodial minor children (including foster children), grandchild, or
3 sibling (such persons being related by blood, marriage, adoption, or legal custody), who do and
4 plan to indefinitely and continuously reside together as a single financially and socially
5 interdependent housekeeping unit, with the intention of living within the bonds of family.

6 **1.21.2** Not more than two (2) natural persons not meeting the requirement of
7 Article 1.21.1 above, who do and plan to indefinitely and continuously reside together as a single
8 financially and socially interdependent housekeeping unit, with the intention of living within the
9 bonds of family.

10 **1.21.3** The reference to “natural” is intended to distinguish between an individual
11 and a corporation or other artificial entity. A “Family member” is a Person who resides in a Unit
12 as part of the Owner’s Family, but is not a title holder.

13 **1.22 “Fractional Ownership” or “Unit Sharing”** means any arrangement (whether
14 written or verbal) whereby multiple individuals, families, artificial entities, or other combinations
15 acquire title to a Unit (or any other possessory or use right in a Unit) with the intention of allocating
16 use rights among legal or beneficial owners, or others, whether pursuant to verbal or written
17 agreements, regarding the sharing of use and possession rights for a Unit.

18 **1.23 “Guest”** means any Person who is not the Unit Owner or a Tenant or a member of
19 the Owner’s or Tenant’s Family, who is physically present on or occupies the Condominium
20 Property on a temporary basis at the expressed or implied invitation of the Unit Owner or other
21 legally permitted Occupant, without the payment or existence of consideration.

22 **1.24 “Insurable Event”** as described in the Act, has the same meaning as Casualty, as
23 defined in Article 1.9 of this Declaration.

24 **1.25 “Insurable Improvements”** means those portions of the Condominium Property
25 required by the Act to be insured by the Association. Whenever a portion of the Condominium
26 Property insured by the Association is replaced by the Association or a Unit Owner with
27 installations intended to comply with then current codes or safety standards, such replacements
28 shall be considered of like kind and quality and the continuing insuring responsibility of the
29 Association. Notwithstanding any interpretation of a provision of the Condominium Documents
30 to the contrary, it is the intention of this Declaration that all Insurable Improvements shall be
31 insured by the Association.

32 **1.26 “Invitee” or “Licensee”** means a Person or Persons expressly or impliedly allowed
33 entry onto the Condominium Property for the purpose of conducting business with or providing
34 services to a Unit or a Unit’s Occupant, or otherwise entering the Condominium Property at the
35 expressed or implied consent of the Unit Owner or Unit Occupant, including, but not limited to,
36 contractors, workmen, delivery persons, domestic assistants and health care assistants. Tenants,
37 Guests, Family members, and Occupants are Invitees.

1 **1.27 “Lease” or “Leasing”** when used in the context of the renting of Units, means the
2 grant by a Unit Owner of a right of use of the Owner’s Unit for consideration. Leasing shall be
3 construed to include any licensing or other arrangement with a third party where Persons other
4 than the Unit Owner are permitted to occupy the Unit for the payment of consideration to any
5 party. Any Person who qualifies as a Tenant as described in Article 1.44 shall be deemed to be
6 leasing a Unit.

7 **1.28 “Lien for Charges”** means a lien, which is recorded to secure a Charge.

8 **1.29 “Limited Common Elements”** means those Common Elements, which are
9 reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified in
10 this Declaration. References in this Declaration to Common Elements include all Limited Common
11 Elements, unless the context would prohibit or it is expressly provided otherwise. Whenever a
12 portion of the Condominium Property naturally and exclusively services a particular Unit or group
13 of Units, and where the area in question lies outside of the boundaries of the Unit, the delegation
14 by this Declaration of Maintenance responsibility for the area by or at the expense of the benefiting
15 Unit Owner(s) shall serve to define the area as a Limited Common Element.

16 **1.30 “Limited Common Expenses”** means those expenses affiliated with the
17 Maintenance of a Limited Common Element, the costs of which are assessed only against the
18 benefiting Unit Owner(s), as authorized by the Act, or if so provided in this Declaration.

19 **1.31 “Maintenance” or “Maintain”** means, unless the context of a provision in the
20 Condominium Documents requires otherwise, required cleaning, heavy cleaning, painting where
21 applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair
22 or replacement. The term “maintenance” does not include repair after Casualty, unless the context
23 of a provision in the Condominium Documents requires otherwise. Whenever a Unit Owner is
24 obligated by the Condominium Documents or law to maintain, repair, or replace portions of the
25 Condominium Property, the Board has the authority to establish reasonable standards for such
26 maintenance, repair, or replacement, including mandating maintenance, repair, or replacement of
27 said items, when the Board deems same are reasonably necessary, and the Board may likewise
28 adopt specifications for replacement components, without need for Unit Owner approval,
29 notwithstanding any provision in this Declaration to the contrary.

30 **1.32 “Management”** means the licensed Community Association Manager and/or
31 Community Association Management Firm, employed or contracted by the Association to assist
32 the Board and its Officers in the day-to-day operation of the Association. There is no requirement
33 for the retention of Management.

34 **1.33 “Material Alteration or Substantial Addition”** means to palpably or perceptively
35 vary or change the use, form, shape, elements or specifications of a Building or other portions of
36 the Common Elements from its original design or plan, or existing condition, in such a manner as
37 to appreciably affect or influence its function, use or appearance.

1 **1.34 “Member”** means the record Owner(s) of legal title to a Unit.

2 **1.35 “Occupant”** when used in connection with a Unit, means a Person who is
3 physically present in a Unit for two (2) or more consecutive days, including staying overnight for
4 one (1) night.

5 **1.36 “Occupy”** when used in connection with a Unit, means the act of staying in the
6 Unit for two (2) or more consecutive days, including an overnight stay of at least one (1) night.

7 **1.37 “Officer”** means the executive Officers and Assistant Officers (if any) appointed
8 by the Board as provided in the Bylaws.

9 **1.38 “Person”** means any individual or representative of an entity, including Unit
10 Owners, Family members, Tenants, Guests, Occupants, Licensees, and Invitees. Whenever the
11 word “Person” is used to require, prohibit, or prescribe certain conduct, the Owner of the Unit with
12 which such Person is affiliated is responsible for ensuring such Person’s compliance with the
13 Condominium Documents.

14 **1.39 “Plats”** means all legal descriptions, site plans, surveys, and graphic depictions of
15 record describing the Condominium Property. The Plats or portions thereof are attached,
16 summarized, or shown with illustrative examples in Exhibit “A” to this Declaration. All Plats of
17 record are incorporated by reference whether or not attached or separately described. The Plats
18 may not reflect the actual configuration or use of the Condominium Property, as deviations from
19 original as-built conditions or uses may have been made over time.

20 **1.40 “Policies and Procedures”** means the policies of the Board adopted in writing
21 from time to time, including those documented in minutes of the Board or correspondence issued
22 under the authority of the Board. Policies and Procedures are part of the Rules and Regulations,
23 and hence part of the Condominium Documents.

24 **1.41 “Primary Occupant”** means one (1) or more natural person(s) designated for
25 occupancy of a Unit when title to the Unit is held in the name of two (2) or more Persons who are
26 not spouses, or when title is held by a trust, corporation or other entity which is not a natural
27 person, except where the context clearly indicates otherwise, the term “Owner” includes “Primary
28 Occupant.” Tenants may not be designated as Primary Occupants.

29 **1.42 “Resident”** means any Person who is occupying a Unit for thirty (30) days, whether
30 or not consecutive, in any calendar year and includes, as applicable, Owners, Tenants and members
31 of their respective Families who reside in the Unit.

32 **1.43 “Rules and Regulations”** means those rules and regulations promulgated by the
33 Board, concerning the transfer, use, appearance, maintenance, and occupancy of the Units,
34 Common Elements, Limited Common Elements, and Association Property, and the administration

1 and operation of the Association (including Policies and Procedures), subject to any limitations
2 contained in this Declaration.

3 **1.44 “Tenant” or “Lessee”** means a Person occupying a Unit, other than the Owner
4 where said occupancy by the non-Owner involves consideration, including, but not limited to, the
5 payment of money, the exchange of goods or services, or the provision of direct economic or
6 indirect economic benefit, including tax benefits and the furtherance of business interests,
7 including, but not limited to, use of a Unit as an employee or customer rewards or incentive, or a
8 charity auction or similar prize, or use of the Unit as part of any type of “home exchange”
9 arrangement. The term “Tenant” shall be used interchangeably with “Lessee.”

10 **1.45 “Unit”** means a part of the Condominium Property subject to exclusive ownership.

11 **1.46 “Unit Owner” or “Owner”** means the record Owner of a Condominium Parcel.
12 Wherever a portion of the Condominium Documents, including the Rules and Regulations,
13 proscribes, restricts, prohibits, governs or requires that a “Unit Owner” take or refrain from taking
14 any action, or engage or refrain from engaging in any conduct, or providing for liability to the
15 Association arising from such acts or conduct or the failure to take required action or engage in
16 required conduct, the term Unit Owner is deemed to include, unless the context specifically
17 suggests otherwise, the Unit Owner’s Family, Tenants, Residents, Guests, Licensees and Invitees,
18 and as may be applicable, the Family members of such Person, as well as employees or agents of
19 such Persons.

20 **1.47 “Utility” or “Utility Services”** as used in the Condominium Act and as construed
21 with reference to this Condominium, and as used in the Condominium Documents, includes but is
22 not limited to, potable water, irrigation, electric power, gas, hot and cold water, heating,
23 refrigeration, video and Communication Services (including, but not limited to, cable, satellite or
24 other television, telephone or other voice services, and wi-fi or any other internet or computer
25 service), air conditioning, garbage disposal, and sewage disposal.

26 **1.48 “Voting Interests”** means the arrangement established in the Condominium
27 Documents by which the Owners of each Unit collectively are entitled to one (1) vote in the
28 Association matters. There are 120 Units, so the total number of Voting Interests is 120.

29 **2. STATEMENT OF CONDOMINIUM DECLARATION.** On May 1, 1979, Pelican Pines
30 Corporation, a Florida corporation (“Developer”), submitted the property described above to
31 condominium ownership in accordance with Florida Statutes.

32 **3. CONDOMINIUM NAME.** The name by which this Condominium is identified is “Bonita
33 Pines Club, Inc., a Condominium.”

34 **4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be
35 as indicated on the Plats.

1 **5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land previously submitted to
2 condominium ownership and a plat thereof describing each Unit, Common Elements and their relative
3 location and the approximate dimensions of each Unit are as shown on the Plats, which are
4 incorporated into and made part of this Declaration.

5 **6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of
6 the Owner of each Unit is 1/120th (one Voting Interest per Unit). Voting rights may be suspended
7 pursuant to the terms of the Condominium Documents and/or Florida law. The sharing of Common
8 Expenses and ownership of Common Elements and Common Surplus is on a 1/120th basis.
9 Suspension of voting rights shall not affect the basis for which Common Expenses are shared or
10 Common Elements and Common Surplus owned. However, suspended Voting Interests are
11 subtracted from the total number of votes required when calculating any required vote or quorum
12 during the period for which said Voting Interest is suspended. The undivided share of ownership
13 of the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or
14 separately hypothecated. As long as the Condominium exists, the Common Elements cannot be
15 partitioned. The shares in the funds and assets of the Association cannot be assigned by a Unit
16 Owner, pledged or transferred except as an appurtenance to the Units.

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

24 **7.1 Utility and Other Easements.** The Association, through the Board, has the power,
25 without agreement of any Unit Owner, to grant, modify or move easements such as electric, gas,
26 cable television, or other access, utility or service easements, or relocate any existing easements,
27 in any portion of the Common Elements or Association Property, as the Board shall deem
28 necessary or desirable for the proper operation and maintenance of the Condominium. Such
29 easements, or the relocation of existing easements, may not prevent or unreasonably interfere with
30 the use of the Units. The Association, through the Board, may also transfer title to utility-related
31 equipment, facilities or material, and may take any other action to satisfy the requirements of any
32 utility company or governmental agency.

33 **7.2 Encroachments.** If any Unit encroaches upon any of the Common Elements or
34 upon any other Unit for any reason other than the intentional act of the Unit Owner, or if any
35 Common Element encroaches upon any Unit, then an easement shall exist to the extent of that
36 encroachment as long as the encroachment exists.

37 **7.3 Ingress and Egress.** A non-exclusive easement shall exist in favor of each Unit
38 Owner and Occupant, their respective Guests, Tenants, Licensees and Invitees for pedestrian
39 traffic over, through, and across sidewalks, streets, paths, walks, and other portion of the Common

1 Elements as from time to time may be intended and designated for such purpose and use, and for
2 vehicular and pedestrian traffic over, through, and across such portion of the Common Elements
3 as from time to time may be paved or intended for such purposes, and for purposes of ingress and
4 egress to the public ways.

5 **7.4 Maintenance, Repair and Replacement.** Easements through, over and beneath the
6 Units and Common Elements for maintenance, repair and replacement of the Units and Common
7 Elements. Such access to the Units shall be only during reasonable hours except that access may be
8 had at any time in case of emergency.

9 **7.5 Support.** Every portion of a Unit contributing to the support of the Unit Building shall
10 be burdened with an easement of support for the benefit of all other Units and Common Elements in
11 a Building.

12 **7.6 Additional Easements.** The Board has the authority, without the joinder of any
13 Unit Owner, to grant, modify, vacate or move any easement if the easement constitutes part of or
14 crosses the Common Elements or Association Property.

15 **8. CONDOMINIUM UNITS AND APPURTENANCES.** Units are those cubicles of space
16 and all improvements constructed therein identified and described in the Plats. The horizontal and
17 vertical boundaries of the Units shall be as follows:

18 **8.1 Upper and lower boundaries.** The upper and lower boundaries of the Unit shall
19 be the following boundaries extended to an intersection with the perimetrical boundaries:

20 **8.1.1 Upper boundary.** The horizontal plane of the undecorated finished ceiling.

21 **8.1.2 Lower boundary.** The horizontal plane of the undecorated finished floor.

22 **8.2 Perimetrical boundaries.** The perimetrical boundaries of the Unit shall be the
23 vertical planes of the undecorated finished interior of the walls bounding the Unit extended to
24 intersections with each other and with the upper and lower boundaries.

25 **8.3 Exclusive Use.** Each Unit Owner has the exclusive use of his or her Unit.

26 **8.4 Appurtenances.** The ownership of each Unit includes, and there shall pass with
27 each Unit as appurtenances thereto whether or not separately described, all of the rights, title and
28 interest including but not limited to:

29 **8.4.1 Common Elements.** An undivided share of the Common Elements, such
30 undivided share to be that proportion set forth in Article 6.

31 **8.4.2 Easements** for the benefit of the Unit. Provided, however, that the
32 Association may suspend the right to use Common Elements or Association Property and suspend
33 other rights or services as permitted by the Act.

1 **8.4.3 Association Membership** and interest in funds and assets held by the
2 Association, provided that funds of the Association are not divisible and may not be separately
3 hypothecated and further provided that the Association may suspend voting rights and other
4 incidents of membership as provided by the Act.

5 **8.4.4 Limited Common Elements.** The right to exclusive use of the Limited
6 Common Elements designated by this Declaration.

7 **8.5 Easement to Air Space.** The appurtenances include an exclusive easement for the
8 use of the air space occupied by the Unit as it exists at any particular time and as the Unit may be
9 altered or reconstructed from time to time.

10 **8.6 Parking Spaces (for Private Passenger Automobiles Only).** Contained in the
11 Common Elements are parking spaces which are not designated on Exhibit "A." Parking spaces
12 are intended to be used by Unit Owners and Tenants who are occupying a Unit pursuant to an
13 approved lease. However, the right of such Unit Owners and Tenants, as well as their Family
14 members, Guests, and Invitees to use such parking spaces may be restricted or regulated by the
15 Board under such terms and conditions as may appear to be appropriate from time to time to the
16 Board. Without limitation, carports (covered parking spaces) are assigned to particular Units as
17 shown on Exhibit "D" (assignments as of January 1, 2007). Those assignments remain in effect
18 until such time as the Board has good and sufficient cause to change them without being arbitrary
19 or capricious. Carports are part of the Common Elements and as such are not owned individually
20 or to be sold separately. Parking in carports is restricted to the assigned Unit's use and to those to
21 whom the Unit Owner has given permission. The Board may charge a Unit Owner who has an
22 assigned carport an annual fee which covers the cost of insurance and maintenance for the carport.
23 Assignments for open parking spaces shall also be made by the Board. New carports may be
24 constructed in the future for Owners who do not have a carport and wish to have one. Construction
25 of new carports requires approval as set forth in Article 9.8. If approved, all costs of constructing
26 new carports shall be borne by those eligible Unit Owners who have requested one. The known
27 charges for the construction of the carports shall be paid to the Association before construction
28 begins and any additional unforeseen costs during construction shall also be paid to the Association
29 when known. Each new carport will be specifically assigned to a Unit Owner requesting and
30 paying for a carport. Such new assignments will be added as an addendum to Exhibit "D." The
31 location and design of the new carports will be determined by the Board. Any bicycles maintained
32 on the premises of the Condominium must be stored as provided in the Rules and Regulations.

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

36 **9.1 Association Maintenance, Repair, and Replacement Obligation.** The
37 Maintenance of all Common Elements and Association Property shall be performed by the
38 Association, and the cost is a Common Expense, except as may otherwise be specifically noted
39 with respect to Limited Common Elements. The Board has the authority to declare Units in the

1 Condominium not available for occupancy, or other portions of the Condominium Property not
2 available for use, when, in the reasonable discretion of the Board, it is determined that the property
3 cannot be safely inhabited or used, or when the property cannot be used for its intended purposes
4 due to required Maintenance of the Condominium Property. In such cases, the Association shall
5 not be liable to any Unit Owner or any other Person for alternative housing costs, lost rent, loss of
6 use, or any other expense or claim.

7 **9.1.1 General Exterior and Structural Maintenance.** Except as provided
8 otherwise herein, the Association's Maintenance responsibility includes, but is not limited to,
9 exterior painting and waterproofing (including caulking), structural maintenance of the Buildings,
10 windows, sliding glass doors, screens, and screen frames, roofing, maintenance of parking
11 facilities, and general exterior maintenance, but does not include Maintenance of hurricane
12 shutters, any other exterior item for which Maintenance responsibility is conferred upon the Unit
13 Owner under Article 9.2, nor any alteration or addition to the Condominium Property made by a
14 Unit Owner or his or her predecessors in title, nor any portions of the Condominium Property
15 exposed to the elements or any structural element for which this Declaration delegates
16 responsibility to the Unit Owner.

17 **9.1.2 Plumbing and Electrical.** The Association's Maintenance responsibility
18 includes, except as may be specifically otherwise provided to the contrary, without limitation, all
19 electrical conduits and installations located from (but not including) the Unit circuit breaker
20 outward; electrical conduits and installations located within or outside a Unit for the furnishing of
21 Utility Services to another Unit, more than one (1) Unit, or the Common Elements; plumbing
22 fixtures and installations located within or outside a Unit for the furnishing of Utility Services to
23 another Unit, more than one (1) Unit, or the Common Elements. The Association's Maintenance
24 responsibility does not include electrical fixtures, switches or receptacles, plumbing fixtures, or
25 other electrical, plumbing or mechanical installations located within the Unit and serving only that
26 Unit, or facilities outside the Unit where this Declaration delegates responsibilities to Unit(s)
27 served said items being the Maintenance responsibility of the Unit Owners.

28 **9.1.3 Windows.** The Association shall Maintain the window installations
29 originally installed by the Developer or subsequent replacements thereof. The Board may choose
30 to replace windows with code compliant impact glass, or other similar code compliant glass, and
31 no Unit Owner vote shall be required. The Association's Maintenance responsibility includes the
32 window frame and encasement, the plate glass, and all caulking thereof. The Association is
33 responsible for interior window locking and opening mechanisms, the windowsill and glass
34 breakage due to any cause, except the negligence or intentional act of a Unit Owner, Occupant,
35 Tenant, Guest or Invitee.

36 **9.1.4 Sliding Glass Doors.** The Association shall Maintain sliding glass door
37 installations originally installed by the Developer or subsequent replacement thereof, and the
38 structural components thereof including frames and fixed panels, the tracks therefore, all door
39 hardware, trim, and caulking. The Unit Owner is Maintaining for replacing the sliding glass door

1 rollers. The Board may choose to replace sliding glass doors with code compliant impact glass, or
2 other similar code compliant glass, and no Unit Owner vote shall be required.

3 **9.1.5 Drywall and Finishes.** The Association shall be responsible for the
4 Maintenance of the drywall constituting the Common Elements of the Condominium, including the
5 interior surface of the exterior boundary walls, as well as the drywall ceiling of the Unit, except if
6 damage to the drywall is caused by the Unit Owner. Decorations of such surfaces (including but not
7 limited to paint, wallpapering, “popcorn,” paneling, etc.) are the responsibility of the Unit Owner. If
8 damage to drywall is caused by roof leakage or other failures of equipment in the Common Elements,
9 the Association shall be responsible for restoring the drywall to its previous condition, including wall
10 and ceiling covering, excluding ceiling “popcorn.” The expense to the Association for such restoration
11 shall not exceed the lesser of the Owner’s insurance deductible on his Unit or \$500.

12 **9.1.6 Screens and Frames.** The Association shall Maintain all screening, screen
13 doors, and balcony screens (including hardware and framing), except Unit entry screens.

14 **9.1.7 Life Safety Equipment.** All fire safety and other life safety equipment, no
15 matter where located shall be Maintained by the Association, excepting smoke alarms within a
16 Unit serving only that Unit, or other fire or life safety additions installed by individual Unit
17 Owners.

18 **9.1.8 Incidental Damage.** If, in connection with the discharge of its Maintenance
19 responsibilities, the Association must remove, disassemble, or destroy portions of the
20 Condominium Property which the Unit Owner is required to Maintain, the Association is
21 responsible for reinstallation or replacement of that item, including cabinetry, drywall and
22 moldings, to its unfinished state, and specifically excluding floor coverings, wall coverings, ceiling
23 coverings, paint, wallpaper, paneling, and other finishes, and further provided that the
24 Association’s obligations are limited to the replacement of items that were part of the
25 Condominium Property as originally installed by the Developer, or replacements thereof of like
26 kind and quality, and except in cases of Casualty repair, or repair of damage caused by a covered
27 cause of loss under the Association’s applicable insurance policy, which shall be governed by
28 Article 13 of this Declaration and the Act. When a Building component which has been damaged
29 or destroyed in connection with the Association’s work must be replaced with an upgraded
30 component to comply with current laws, ordinances, or codes, the Unit Owner is responsible for
31 the additional costs, secured by a Lien for Charges, for the amount by which the upgraded
32 component exceeds the cost of a like kind replacement. Repair or replacement of all upgrades or
33 additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner,
34 specifically including, but not limited to, hurricane shutters which the Association must remove in
35 connection with the maintenance of a Building, although the Association may have shutter removal
36 and/or reinstallation work performed by its contractor, and the Unit Owner will be responsible for
37 reimbursement to the Association as a Charge.

38 **9.2 Unit Owner Maintenance, Repair, and Replacement Obligation.** Each Unit
39 Owner is responsible, at his or her own expense, for all Maintenance of his or her own Unit and

1 those Limited Common Elements serving his or her Unit as set forth below, whether ordinary or
2 extraordinary, including, without limitation:

3 **9.2.1 Electrical.** The Unit Owner shall Maintain all electrical fixtures, apparatus
4 or installations located within the Unit, which service only the individual Unit plus front entry
5 lighting, all electrical fixtures, apparatus or installations from and including the circuit breaker
6 inward, which service only that Unit.

7 **9.2.2 Unit Front Entry Door.** The Unit Owner shall Maintain the Unit front
8 entry door, including the front entry screen doors and screening, except that the Association may
9 paint the exterior of entry doors, subject to the provisions of Article 9.11.

10 **9.2.3 Other Doors.** The Unit Owner shall Maintain all other doors and the
11 framing and structural components thereof, including trim, caulking, locks and hardware within or
12 servicing the Unit, subject to the provisions of Article 9.11.

13 **9.2.4 Hurricane Shutters.** The Unit Owner shall Maintain hurricane shutters and
14 the structural components thereof, subject to the provisions of Article 9.11.

15 **9.2.5 Electrical, Plumbing and Mechanical Fixtures.** The Unit Owner shall
16 Maintain the electrical, mechanical and plumbing fixtures and outlets (including connections)
17 within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and
18 all related fixtures and installations.

19 **9.2.6 Appliances.** The Unit Owner shall Maintain all appliances within the Unit.

20 **9.2.7 Heating and Air Conditioning Equipment; Ductwork.** The Unit Owner
21 shall Maintain all portions of the heating and air conditioning equipment (including condensers,
22 air handlers, ductwork, electrical lines, refrigerant lines and discharge lines), dryer vents to the
23 point of termination (even if exterior to the Unit), and air conditioner or air handler discharge lines
24 to the point of termination or connection to another discharge (even if exterior to the Unit), except
25 that Association shall Maintain chases housing refrigerant lines.

26 **9.2.8 Floor Coverings.** The Unit Owner shall Maintain carpeting and other floor
27 covering (including balcony areas and front entry floor covering up to the common walkway).

28 **9.2.9 Other Equipment and Fixtures.** The Unit Owner shall Maintain all other
29 equipment or fixtures located or contained entirely within a Unit which serve only that Unit, as
30 well as telephone lines and apparatus from the point where a line or apparatus serves only that
31 Unit, and cable television lines and apparatus from the point where said lines or apparatus serve
32 only that Unit, no matter where located.

33 **9.2.10 Plumbing (Incoming).** The Unit Owner shall Maintain all incoming
34 plumbing from (and including) the shutoff valve (at hot water) inward.

1 **9.2.11 Plumbing (Outgoing).** The Unit Owner shall Maintain outbound plumbing
2 until the point of exit from the Unit boundary. Provided, however, that the Unit Owner is
3 responsible for the remediation of clogged pipes or drains, where the source of blockage or
4 obstruction originates from the Unit, even if the area where the blockage or obstruction is located
5 is outside of the Unit boundary.

6 Any of the above-described areas that are to be Maintained by the Unit Owner, or by the
7 Association at the expense of the benefiting Unit(s), if located outside of the boundaries of the
8 Unit, are declared Limited Common Elements. Responsibility for Maintenance of Condominium
9 Property may not coincide with obligation for insurance of Condominium Property, nor its repair
10 after Casualty, or damage from covered cause of loss under the Association’s applicable insurance
11 policy, which are governed by Article 12 and Article 13, respectively.

12 **9.3 Balconies.** The Unit Owner who owns or has the right to the exclusive use of a
13 balcony is responsible for the Maintenance of: balcony floor coverings (the Board may prohibit
14 certain types of floor coverings, adopt specifications for permissible flooring on balconies, and
15 require the removal of existing coverings when necessary for the structural preservation of a
16 Building); storm shutters and other enclosures; the wiring, electrical outlet(s) and fixture(s) on or
17 servicing the balcony; ceiling fans; and the replacement of light bulbs. The Association is
18 responsible for the repair of the original sliding glass doors and glass panels and the structural
19 components thereof, including trim and caulking, which separate the balconies from the interior of
20 the Unit. However, the Unit Owner is responsible for sliding door rollers. The Association is
21 responsible for Maintenance of screen frames, screening, and first floor balcony exit doors, but not
22 including any alteration or addition to the Condominium Property made by a Unit Owner or his
23 predecessors in title. If original screens have been or are to be replaced by fine mesh screens when
24 replacement is necessary, the Unit Owner is responsible for the difference in cost of the fine mesh
25 versus standard mesh. However, the Association shall not be responsible for the maintenance or repair
26 of balcony screens or frames if (1) damage is caused by the Occupants of the Unit, or (2) access to
27 the screens or frames if hindered by the presence of hurricane shutters or enclosures. The Association
28 is responsible for structural Maintenance of balcony floors (not coverings), ceilings and exterior
29 portions, and also the Buildings’ walls enclosing the balconies. Painting of the walls and ceiling of
30 the balcony in connection with the painting of the Buildings is the responsibility of the Association.
31 The Unit Owner may elect, with Board approval, to paint the walls and ceiling subject to the
32 conditions of uniformity of appearance (e.g., color, texture) at his or her own expense. Glass
33 enclosures or partitions of the balconies that were not installed as part of the original construction (if
34 permitted as provided elsewhere in the Condominium Documents) are the Maintenance responsibility
35 of the Unit Owner. Hot tubs, spas, saunas, tanning beds, and similar apparatus, whether or not affixed
36 to the realty, are prohibited on balconies or within Units.

37 **9.4 Unit Floor Coverings.** All Units above the first floor shall always have the floors
38 covered with wall-to-wall carpeting, except in kitchens, bathrooms, balconies, foyers, and utility
39 or laundry rooms, except as provided below. Hard floor surfaces (tile, marble, wood, etc.) may
40 only be installed in areas other than kitchens, bathrooms, balconies, foyers, and utility or laundry

1 rooms, upon prior written approval of the Board, which shall condition its approval on the Unit
2 Owner's proof of the installation of appropriate sound-deadening material. Specifications for
3 sound proofing of hard flooring (wherever located) must be approved in writing by the Board or
4 its representative prior to installation, and then the installed sound proofing must be inspected and
5 approved prior to installation of the hard flooring. The Board has the authority to adopt
6 specifications for minimum sound proofing material that will be approved. Installed floor
7 coverings shall, in all cases, and/or in the absence of any specifications adopted by the Board, meet
8 the standards of the Florida Building Code and then-prevailing industry standards applicable to
9 similar condominium buildings in Lee County, Florida.

10 **9.5 Unit Owner Obligations in Connection with Maintenance, Repair, and**
11 **Replacement.** In connection with his or her Maintenance obligations, the Unit Owner has the
12 responsibility to obtain the prior written approval of the Association, through the Board, before
13 performing any Maintenance which requires: changes or alterations to the physical appearance of
14 the Condominium Property visible from any exterior vantage; excavation; access to a Building's
15 roof; removal, modification or relocation of any interior partitions or walls, whether load-bearing
16 or not; relocation of cabinets or appliances; relocation of Utility, plumbing, or electrical
17 installations or fixtures or ductwork; the use of heavy or noisy equipment; such other actions as
18 may cause concern for the peace and safety of the Condominium and its Residents or the aesthetics
19 of the Condominium Property, as determined by the Board. The Association may condition such
20 approval on criteria as the Board deems reasonable, including but not limited to:

- 21 • Preservation of uniformity of appearance;
- 22 • Use of contractor(s) that are properly licensed and fully insured, and that
23 the Owner will be financially responsible for any resulting damage to
24 Persons or property not paid by the contractor's insurance. Unit Owners are
25 responsible for the actions of their contractors and warrant to the
26 Association, whether or not specifically made a condition of Association
27 approval (or in cases where no Association approval is required) that all
28 Persons coming into the Condominium Property to perform work on or
29 services for the Unit hold all proper licenses, have obtained all proper
30 permits, and carry such insurance as may be required by law or the Board;
- 31 • Right (but not duty) of oversight by the Association or its agent;
- 32 • The Unit Owner submitting plans as to the scope of the contemplated work;
- 33 • Restrictions as to hours and days of work;
- 34 • Imposition of time limits in which jobs must be completed and prohibitions
35 against major renovations during certain times of year.

1 • Restrictions regarding equipment that may be parked or stored on or near the
2 Condominium Property during construction.

3 • Restrictions regarding the transport and storage of materials and supplies
4 necessary for the construction to be performed.

5 Unit Owners may not engage in “extensive” remodeling work or “heavy” construction activity,
6 except with prior approval of the Board, and then, only during the months of May through October,
7 inclusive. “Extensive” remodeling and “heavy” construction shall be as defined or interpreted by
8 the Board from time to time, but whether so defined or interpreted or not, includes, but is not
9 limited to, the following:

10 • Activities involving the use of power equipment such as jackhammers, drills,
11 saws, and similar equipment, which create substantial noise, dust, or debris,
12 as determined by the Board.

13 • Activities resulting in the creation of substantial noise that can be heard
14 outside of the Unit, or which create substantial dust or debris, regardless of
15 whether power equipment is used or not, as determined by the Board.

16 • Activities rendering the Unit uninhabitable during the performance of the
17 work.

18 • Activities requiring the storage of materials or equipment on the premises
19 outside of the Unit.

20 • Activities involving the presence of work crews or significant numbers of
21 workers, as determined by the Board.

22 • Activities requiring the use of scaffolding, booms, or other forms of exterior
23 access.

24 The Board may waive the prohibition against such work being done in the months of November
25 through April in the case of an emergency, in *de minimus* cases, or in hardship situations, as
26 determined by the Board, and may permit the temporary staging of scaffolding and other work
27 required for installation or maintenance and repair of hurricane shutters or other hurricane
28 protection. The Board shall have all remedies permitted by law when Unit Owners fail to comply
29 with this Article 9.5. Such includes, but shall not be limited to daily fines to the maximum amount
30 permitted by law; and/or injunctive relief; and/or denying contractors, material suppliers and other
31 similar people’s access to the Buildings or Condominium Property.

32 The Association may, but shall not be obligated to, act as the Owner’s agent in obtaining the
33 services of contractors or others to perform Unit Owner Maintenance responsibilities in the event
34 of an emergency, or in non-emergency situations, provided that in non-emergency situations, the

1 Association and the Owner so agree, or absent such agreement when such work is deemed
2 necessary, as determined by the Board, to facilitate projects involving the Association's
3 Maintenance of the Condominium Property. In all such cases, the Unit Owner is deemed to consent
4 to reimbursement of expenses incurred, secured by such rights as exist for collecting Common
5 Expenses under these Condominium Documents through a Lien for Charges. Unit Owners shall at
6 all times be responsible to ensure, whether or not Association approval is required for work being
7 done within the Unit or elsewhere upon the Condominium Property, that all contractors and other
8 Persons performing services for the Unit Owner are properly licensed and insured, including
9 required Worker's Compensation insurance, and that the Condominium Property is kept free from
10 liens and cause no damage to the Condominium Property. The Board has the power (but not the
11 duty) to require proof of: licensure; building permits; and insurance, and may set standards for
12 insurance as to required coverage, deductibles, or other terms and conditions, and may require the
13 Association to be named as an additional insured under such policies. The Unit Owner shall hold
14 the Association harmless from any claim of any nature arising out of failure to comply with these
15 requirements.

16 **9.6 Modifications, Alterations, or Structural Work by Unit Owners.** No Owner
17 may make or permit the making of any modifications or alterations to any portion of his or her
18 Unit visible from the exterior of his or her Unit, or in any manner change the appearance of any
19 portion of the Common Elements, undertake any structural work, or undertake any structural
20 modification or alteration, without first obtaining the written consent of the Board, which consent
21 shall be denied if the Board determines that the proposed modifications or alterations would
22 adversely affect, or in any manner be detrimental to, the Condominium in part or whole.
23 "Structural" work, modifications or alterations include, but are not limited to: relocation of existing
24 electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing
25 fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges;
26 the removal or modification of any partition, door, window or screen; raising ceilings; or relocating
27 kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" work shall also
28 include the addition, removal, or relocation of any ductwork, plumbing line or fixture, any
29 electrical line or fixture, or the removal, modification or creation of any interior partition.
30 Replacement of cabinetry, appliances and fixtures, with substantially equivalent installations in
31 the same location, shall not be deemed "structural" and shall not require approval of the
32 Association, unless a building or other permit is required. Further, "structural" work, modifications
33 or alterations includes any and all work that requires a building permit, an electrical permit, a
34 plumbing permit, a mechanical permit, or similar permit from the appropriate governmental
35 agency, whether or not mentioned above.

36 The Board may, in circumstances it deems appropriate, and without limiting the right to ask for
37 plans or specifications and other relevant information, require sealed plans from an Architect or
38 Professional Engineer licensed to practice in Florida as a condition of reviewing any requested
39 modification, alteration or addition to the Condominium Property, which requires Board approval,
40 as set forth above. The Board may require, as a condition of review, the Unit Owner's obligation
41 to pay the Association's expenses of review, including, but not limited to, legal, engineering or

1 other consultant fees. The Board, in reaching its decision, may take into account uniformity of
2 appearance, compatibility with architecture in Bonita Pines Club, the quality of the proposed
3 alteration, objections of neighboring Residents, and such other criteria as the Board may
4 reasonably adopt in reaching its decision, without limitation. The Board may take into account
5 whether other Unit Owners would be able to make such alterations or modifications, and the effect
6 of the fact that similar requests may need to be approved by the Association. If the Board
7 determines to permit any modification or alteration which is visible from the exterior of the Unit,
8 from any vantage, said modification or alteration must also be approved by the Unit Owners in the
9 manner provided in Article 9.8 of this Declaration, regardless of the cost or expense of such
10 modification or alteration, provided that the Board may waive the requirement for Unit Owner
11 approval if similar modifications or alterations have been approved by the Association previously,
12 are *de minimus* or for safety (as determined in the sole discretion of the Board), or are specifically
13 authorized by the Condominium Documents. If any Unit Owner requests approval of any structural
14 work, modification or alteration, the Association may permit such work, modification or alteration
15 if same would not materially affect or interfere with the Utility Services constituting Common
16 Elements, if any, located therein, the structural integrity of a Building, or create a nuisance or
17 disturbance to neighboring Units. The Board may impose requirements on contractors and
18 condition approval on conditions set forth in Article 9.5 regarding Unit Owner Maintenance.

19 **9.7 Additional Unit Owner Responsibility for Modifications or Alterations.** If a
20 Unit Owner (or his or her predecessors in title) makes, or has made any modifications or alterations
21 to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit
22 Owner (and his or her heirs, successors in title and assigns) shall be financially responsible for the
23 Maintenance, care, preservation, or reconstruction of the modification or alteration and shall
24 execute such documents as the Association may promulgate, if any, accepting said financial
25 responsibility. Insurance of modifications or alterations shall be the responsibility of the Unit
26 Owner, except as may otherwise be provided by this Declaration or the Act. Any modification or
27 alteration to the Condominium Property made by a Unit Owner may be required to be removed in
28 connection with the Association’s Maintenance of the Condominium Property. In such cases, the
29 Unit Owner who installed the modification or alteration (and/or their successors in title) shall be
30 obligated to reimburse the Association for any costs affiliated with removal and/or reinstallation
31 of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to
32 the Common Expense lien created by this Declaration, or alternatively, said Owner may be
33 required to remove and reinstall said modification or alteration, if so determined by the Board.
34 Further, the Association, its contractors and agents, shall not be liable for any damage to the item
35 arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful
36 misconduct of the Association or its contractor or agent, although the Association may provide for
37 stricter liability standards in contracts with contractors.

38 **9.8 Material Alterations or Substantial Additions by Association.** Except as may be
39 provided elsewhere in this Declaration to the contrary, there shall be no Material Alteration or
40 Substantial Addition to the Common Elements or Association Property which is real property by
41 the Association, except as authorized by the Board. Provided, however, that if any such Material

1 Alteration or Substantial Addition requires or obligates the expenditure of Association funds of
2 more than five percent (5%) of the Association's budget for the fiscal year in which the work is
3 authorized, including reserves, the Board shall obtain approval of at least two-thirds (2/3rds) of the
4 Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed
5 meeting at which a quorum has been attained, or by written agreement of at least two-thirds (2/3rds)
6 of the entire Voting Interests. Necessary maintenance of the Common Elements or Association
7 Property, regardless of the level of expenditure, is the responsibility of the Board. Cellular
8 antennae and similar apparatus and apparatus to provide communication or internet services as
9 provided in Article 1.12, may be placed on the Condominium Property as authorized by the Board,
10 subject to approval of any other entity that may be required.

11 **9.9 Damage Caused by Conditions of the Condominium Property.** Each Unit
12 Owner is liable to the Association and/or other Unit Owners for the expenses of any Maintenance
13 of the Condominium Property, made necessary by his or her act, omission, negligence, violation
14 of the Condominium Documents or applicable law, or same by any member of his or her Family
15 or his, her, or their Occupants, Residents, Guests, Tenants or Invitees. If any condition, defect or
16 malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to
17 insure or Maintain is caused by the Owner's (or his or her Family member's, Occupant's,
18 Resident's, Guest's, Tenant's or Invitee's) act, omission, negligence, or failure to comply with the
19 Condominium Documents or applicable law, causes damage to the Common Elements,
20 Association Property, or to other Units, the Owner of the offending Unit shall be liable to the
21 Person or entity responsible for repairing the damaged areas for all costs of repair or replacement
22 not paid by insurance (including the deductible) and without waiver of any insurer's subrogation
23 rights, and without impairing any coverage obligation which may exist as a matter of law or
24 contract, provided that such responsibility shall be conditioned on the Unit(s) which is/are seeking
25 to impose such liability being adequately insured based on local standards and conditions. Further,
26 any claim of a Unit Owner against the Association or another Unit Owner relative to damage to
27 the Condominium Property, to the extent the Association or other Unit Owner might otherwise be
28 liable pursuant to the Condominium Documents or applicable law, shall be predicated upon the
29 Unit Owner making the claim being adequately insured based on local standards and conditions,
30 whether or not individual Unit Owner insurance is mandated by the Act. Should any Unit Owner fail
31 to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance,
32 if obtained pursuant to the above-described standards, would have provided coverage or
33 compensation for the loss and without waiving any other remedy of the Association regarding Unit
34 Owner insurance requirements. The requirement that the individual Unit Owner obtain insurance
35 as a limitation on making third party claims shall not be construed to confer any additional liability
36 or responsibility on the Association or other Unit Owners (without limitation, the Association shall
37 not be obligated to obtain proof of Unit Owner insurance), but is intended to require Unit Owners
38 and the Association to respectively insure risks that are customarily experienced in condominiums
39 located in Florida's coastal communities, condominiums in general, including, but not limited to,
40 damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes,
41 water seepage and leakage, and mold and mildew, regardless of whether such insurance is legally
42 required.

1 Unit Owners are responsible for the regular inspection of their Units, maintaining appropriate
2 temperature and humidity control to prevent mold, and to promptly report to the Association any
3 damage to the Condominium Property that is visible from within the Unit or its appurtenant
4 Limited Common Elements, or any other conditions which are relevant to the Association's
5 performance of any Maintenance responsibilities required by the Condominium Documents.

6 In the event any event, condition, or malfunction poses an immediate threat to safety or where
7 damage to a Building must be stopped or mitigated on an emergency basis, the Association may,
8 but is not obligated to, enter Unit(s) without prior notice to the Owner(s) and take reasonable action
9 to mitigate or prevent further damage. Without limitation the Association may take action to stop
10 water discharges and initiate "dry-out" procedures, as agent for the Unit Owner, and at the Unit
11 Owner's expense when portions of the Condominium Property which are the Maintenance
12 responsibility of the Unit Owner are involved, secured by a Lien for Charges.

13 The Association may, but is not obligated to, repair damage without the prior consent of the Owner
14 in the event of an emergency, and the Owner is responsible for reimbursement of the Association,
15 with the cost being secured by a Lien for Charges.

16 Unit Owners are required to shut off the main water supply line to the Unit and any other lines that
17 the Board may specify when the Unit will be unoccupied on an overnight basis, and failure to do
18 so will create a presumption of negligence.

19 Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer,
20 are always available to service the Unit. If the Unit Owner fails to maintain Utility Services to the
21 Unit, the Association has, without waiver of other remedies, the right to enter the Owner's Unit
22 and Limited Common Elements and take any and all lawful actions to make the Utility Services
23 available to service the Unit; in which event, the Unit Owner is charged for such activities
24 (including attorneys' fees incurred by the Association) by the Association which shall be secured
25 by a Lien for Charges.

26 **9.10 Combination of Units.** Two (2) or more contiguous Units may, subject to the prior
27 written approval of the Board, be combined into a single living space. The Board may disapprove
28 such request, based upon its discretion, and upon a finding that the proposed combination of Units
29 is not in the best interests of the Association. The Board, as a condition of approving the
30 combination of Units, may require sealed plans from an Architect or Professional Engineer
31 licensed to practice in Florida, certifying to the Association that the proposed work affiliated with
32 the Unit combination complies with all applicable laws, codes, and ordinances. The Board may
33 further require such Professional Engineer's or Architect's certification at the end of the work,
34 certifying that said work has been performed in accordance with the plans and specifications, and
35 in accordance with all applicable laws, codes, and ordinances. The Owner (and his or her
36 successors in title) shall be required to indemnify and hold the Association and Unit Owners
37 harmless for any claim of any nature arising from the combination of the Units. Should the Board,
38 in its discretion, determine that the Association must retain independent professionals to review
39 the request, including, but not limited to, engineers, architects, or attorneys, the Association may

1 also condition approval of the requesting Unit Owner’s agreement to reimburse the Association
2 for said fees and expenses. Units which have been combined shall, after combination, be used only
3 as a “single family” residence (including rental rights) and may not be used as two (2) or more
4 living quarters. Units which have been combined shall constitute two (2) or more Units for
5 purposes of sharing Common Expense, ownership of Common Elements, and voting rights. If
6 Units which have been combined are sold, they shall be sold as a single living quarters, unless
7 specifically approved by the Board to the contrary. If combined Units are to be reconfigured into
8 two (2) or more living spaces, the Board has the authority, using the same criteria listed above for
9 combination of Units, to approve the reconfiguration. Without limitation, the Board has the
10 authority to require plans from an Architect or Professional Engineer licensed to practice in
11 Florida, certifying to the Association, that the reconfiguration of the Units into two (2) or more
12 living spaces is done in accordance with all applicable laws, codes, and ordinances and in
13 accordance with the original configuration of the Units.

14 **9.11 Hurricane Protection.** The Board shall adopt hurricane shutter specifications for
15 the Condominium, which includes color, style, and other factors deemed relevant by the Board.
16 All specifications adopted by the Board shall comply with the applicable building code. Unit
17 Owners are responsible for the installation, operation, and Maintenance of hurricane protection on
18 windows, doors (including sliding glass doors), and all exterior openings or apertures servicing
19 the Unit. Notwithstanding any provision in this Declaration to the contrary, the Board may, subject
20 to the provisions of the Act, and with the approval of Voting Interests as may be required by that
21 statute, install and operate hurricane shutters and/or other forms of code compliant hurricane
22 protection (including, but not limited to, code compliant impact glass, windows, and/or doors),
23 except that a vote of the Owners is not required for such installations on or to building components
24 where the Maintenance of such component is the responsibility of the Association pursuant to this
25 Declaration, and hurricane protection of such components is the responsibility of the Association.
26 The authority conferred by this Article shall apply whether or not such installations constitute a
27 Material Alteration or Substantial Addition to the Common Elements. Costs of installation shall
28 be assessed or charged, and credits given, as provided in the Act.

29 **9.12 Electric Vehicle Charging and Natural Gas Fuel Stations.** The Board, without
30 a vote of the Unit Owners and without regard to Article 9.8 of this Declaration, may install a
31 common charging or natural gas fuel stations and may set the terms and conditions of its use,
32 including use fees. Individual charging or natural gas fuel stations installed by Unit Owners shall
33 be administered as provided in the Act and subject to Rules of the Board.

34 **10. ASSESSMENTS AND CHARGES.** Assessments against Owners shall be made by the
35 Board, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners
36 on the basis set forth in Article 6 and elsewhere in these Condominium Documents. The
37 Association has the power to levy and collect Assessments against each Unit and Unit Owner in
38 order to provide the necessary funds for proper operation and management of the Condominium
39 and for the operation of the Association. This power includes both “regular” Assessments for each
40 Unit’s share of the Common Expenses or individual Limited Common Expenses (which shall be

1 based upon actual costs to be incurred and not allocated in the manner in which Common Expenses
2 are incurred) as set forth in the annual budget, and “special” Assessments for unusual, nonrecurring
3 or unbudgeted Common Expenses or Limited Common Expenses.

4 **10.1 Liability for Assessments and Charges.** A Unit Owner is liable for all
5 Assessments and Charges coming due while he or she is the Unit Owner. Except as provided in
6 Article 10.5, any Person or entity which acquires title to a Unit is jointly and severally liable with
7 their predecessor in title for all unpaid Assessments and Charges against the predecessor for his or
8 her share of the Charges and Assessments, including interest, late fees, attorneys’ fees and other
9 costs and expenses of collection incurred by the Association up to the time of the transfer, without
10 prejudice to any right the transferee may have to recover from the transferor the amounts paid by
11 the transferee. The liability for Assessments or Charges may not be avoided by waiver of the use
12 or enjoyment of any Common Elements or by the abandonment of the Unit for which the
13 Assessments or Charges are made.

14 **10.2 Default in Payment of Assessments for Common Expenses or Charges.**
15 Assessments and installments thereof not paid within ten (10) days from the date when they are
16 due shall incur a late fee and bear interest from the date first due until paid, in an amount as
17 determined by the Board which, unless otherwise specified, shall be the maximum allowed by law.
18 For so long as provided by law, the Association must send a notice of late Assessment, in
19 accordance with the Act, to the delinquent Unit Owner prior to any attorneys’ fees being incurred
20 in collection of the Assessment in accordance with the Act.

21 The Association has a continuing lien on each Condominium Parcel for any unpaid Assessments
22 (including Special Assessments) and Charges on such parcel, with interest, late fees and for
23 reasonable attorneys’ fees, as well as costs and expenses of collection incurred by the Association
24 incident to the collection of the Assessment or enforcement of the lien, including, but not limited
25 to, fees, costs, or expenses incurred in an appeal, in a bankruptcy, in litigating the amount of fees
26 after entitlement thereto has already been determined, and/or in litigating the entitlement to fees.
27 Except as otherwise provided in the Act, no lien may be filed by the Association against a Unit
28 until forty-five (45) days after the date on which a notice of intent to file a lien has been delivered
29 to the Owner, pursuant to the Act. The notice of intent to file a lien includes only those amounts
30 that came due as of the date of said notice. The recorded lien includes the amounts identified in
31 the notice of intent to file a lien along with any additional Assessments (including Special
32 Assessments) or Charges that may have come due since delivery of said notice of intent to file a
33 lien without having to file a separate lien or send a subsequent notice of intent to file a lien.

34 **10.3 Notice of Intention to Foreclose Lien.** So long as required by law, no foreclosure
35 judgment may be entered until at least forty-five (45) days after the Association gives written
36 notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments or
37 Charges. If this notice is not given at least forty-five (45) days before the foreclosure action is
38 filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if
39 applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a
40 final judgment or foreclosure, the Association shall not recover attorneys’ fees or costs. The notice

1 must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt
2 requested, addressed to the Unit Owner at his or her last known address; and, upon such mailing,
3 the notice shall be deemed to have been given. If after diligent search and inquiry the Association
4 cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice,
5 the court may proceed with the foreclosure action and may award attorneys' fees and costs as
6 permitted by law. The notice requirements of this provision are satisfied if the Unit Owner records
7 a Notice of Contest of Lien as provided in the Act. The notice requirements do not apply if an
8 action to foreclose a mortgage on the Unit is pending before any court; if the rights of the
9 Association would be affected by such foreclosure; and if actual, constructive, or substitute service
10 of process has been made on the Unit Owner.

11 **10.4 Attachment of Rental Income when Unit is Delinquent.** Notwithstanding any
12 other remedy available to the Association under this Declaration, the Bylaws, or applicable law,
13 the Association has the following options when payment of Assessments or Charges are in default
14 (more than ten days in arrears). The Association may, without order of the Court, direct rental
15 income (by written notice to the Tenant with copy to the Unit Owner) from Units in default to be
16 paid directly to the Association until all outstanding Assessments, Charges, other monetary
17 obligations, interest, late fees, costs, collection expenses, attorneys' fees and receiver's fees, if
18 applicable, are paid in full. As an alternative, the Association may apply to a Court of competent
19 jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental
20 proceeds paid on account of a Unit in default paid directly to the Association, the court registry,
21 or a receiver, as the Court may direct. The Association may choose any of these courses of action,
22 or other remedies as may be prescribed by law or elsewhere in the Condominium Documents, as
23 the Board deems appropriate, without same constituting a waiver or election of remedies.

24 **10.5 First Mortgagee.** The priority of the Association's lien and the obligation for
25 payment of past due Assessments or other sums due in relation to first mortgagees who obtain title
26 as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Act.

27 **10.6 Certificate of Unpaid Assessments or Charges.** Any Unit Owner has the right to
28 require from the Association a certificate showing the amount of unpaid Assessments or Charges
29 against him or her with respect to his or her Unit. The Association, its agents, and counsel are
30 permitted to charge a fee for preparing such information, in amounts established by the Board, or
31 in a management agreement between the Association and a Community Association Management
32 Firm, or based on reasonable and customary fees charged by legal counsel.

33 **10.7 Lien for Charges.** Except as prohibited by law, there is created by this Declaration
34 a common law and contractual lien to secure payment for any service which the Association
35 provides for an individual Unit Owner or expenses which the Association incurs in regard to a
36 Unit Owner and which are not otherwise secured by the statutory lien for Common Expenses. By
37 way of example, but not limitation, a Lien for Charges exists to secure repayment to the
38 Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner
39 insurance, or Maintenance responsibility in connection with the Association's discharge of its
40 Common Element Maintenance responsibilities, or address emergency situations, such as water

1 extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and
2 late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the
3 right to recover attorneys' fees, costs and expenses of collection.

4 **10.8 Liens and Encumbrances against Units.** The Association has the right to satisfy
5 any delinquent lien or other security interest against a Unit, including without limitation unpaid ad
6 valorem taxes. The Association has no obligation to satisfy such liens nor ascertain their existence.
7 Prior to paying off a lien against a Unit, the Association shall give the Unit Owner reasonable
8 notice and opportunity to remove the lien. Any such payments made by the Association will be
9 secured by a Lien for Charges.

10 **10.9 Other Remedies.** The Board has the authority to impose such other remedies or
11 sanctions permitted by the Act pertaining to non-payment of monetary obligations to the
12 Association. Without limitation, same include suspension of use rights in Common Elements and
13 Association Property; suspension of voting rights; suspension of the right to serve on the Board;
14 the attachment of rental income; denial of lease approval requests; and acceleration.

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

24 **11.1 Unit and Limited Common Element Access.** The irrevocable right of access to
25 each Unit and its appurtenant Limited Common Elements during reasonable hours as may be
26 necessary for the Maintenance of any Common Elements or of any portion of a Unit to be
27 maintained by the Association pursuant to this Declaration, or as necessary to prevent damage to
28 the Common Elements or to any Unit or Units, or to determine compliance with the terms and
29 provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted
30 pursuant to such documents, as the same may be amended from time to time. A pass key or code
31 must be provided by the Unit Owner to the Association for each Unit entry door and any private
32 access areas, and as may be applicable air conditioning or utility room or closet, storage unit, and
33 any secured parking area. The Association may utilize a master key/entry system. In the event that
34 Unit Owner fails to provide a key or other applicable means of access, the Association shall be
35 entitled (but is not obligated) to use all reasonable and necessary efforts to access the Unit or
36 Limited Common Element, including, but not limited to, the hiring of a locksmith or the
37 engagement of local fire and rescue authority; in which case, the Association shall also have the
38 right to charge to the Unit Owner all costs and expenses associated with the Association's attempt
39 to gain access to the Unit, secured by a Lien for Charges. Nothing contained in this section shall
40 in any way obligate the Association to act or impose any additional liability or responsibility on

1 the Association with regard to the access of the Unit or Limited Common Elements. When a Unit
2 Owner must Maintain portions of the Condominium Property, and that activity requires access to
3 another Unit, the Unit Owner has reasonable right of access which shall be administered through
4 the Association. The Unit Owner upon whose behalf access has been obtained is obligated for the
5 expense of repairing any damage to the Condominium Property, or other property of the Unit
6 Owner or in the Unit accessed.

7 **11.2 Assessments and Charges.** The power to make and collect regular Assessments,
8 Special Assessments, and other Charges against Unit Owners.

9 **11.3 Delegation.** The power to enter into contracts with others, for valuable
10 consideration, for maintenance and management of the Condominium Property and Association
11 Property and in connection therewith, or its Officers, Committees, Management, or other agents,
12 to delegate the powers and rights herein contained, including, without limitation, the making and
13 collecting of Assessments and other Charges against Unit Owners, and perfecting liens for non-
14 payment thereof.

15 **11.4 Regulations.** The power to adopt and amend Rules and Regulations regarding the
16 operation of the Association and use, appearance, maintenance, transfer and administration of the
17 Condominium Property and Association Property.

18 **11.5 Acquisition or Transfer of Real or Personal Property; Leasing Common**
19 **Elements and Association Property.** The power to acquire real property and transfer real
20 property owned by the Association or otherwise convey and mortgage real property with the same
21 approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval is required
22 to acquire, purchase, or mortgage a Unit in connection with foreclosure of a lien or deed in lieu of
23 foreclosure, nor to dispose of such Unit. No Unit Owner approval is required to acquire and
24 mortgage a Unit in connection with the Association's right of first refusal set forth in Article 17,
25 nor to dispose of such Unit. No Unit Owner approval is required for the acquisition or disposition
26 of real property necessary, as determined by the Board, to address legal description or survey
27 errors, or boundary or ownership disputes or uncertainties. Leasing of Units, Common Elements
28 or Association Property may be approved by the Board, as well as the lease fees, use fees, and
29 other fees permitted by the Act or the Condominium Documents. The Board has the authority to
30 acquire personal property and to dispose of same, without need for membership approval.

31 **11.6 Membership Agreements.** The power to enter into agreements to acquire
32 leaseholds, memberships, and other possessory or use interests in lands or facilities such as country
33 clubs, golf courses, marinas, and other recreational facilities with the same approval of Unit
34 Owners as needed to amend the Declaration.

35 **11.7 Fees for Use of Common Elements; Other Fees and Deposits.** The power to set
36 fees, pursuant to the Act. The Board has the authority to set use fees for use of Common Elements
37 or Association Property, as well as the regulations and policies pertaining to such use. The Board
38 may, on a reasonable basis, permit use of the Common Elements or Association Property for

1 private functions. The Board may also establish other fees and deposits determined necessary by
2 the Board. Without limitation, same includes clubhouse/meeting room deposits, use fees and/or
3 clean-up fees; fees for the issuance of parking passes or decals; fees for architectural/engineer
4 review of renovation/alteration plans; contractor damage deposits; pet deposits; key/access card
5 deposits; and internet service, facsimile service and other services using Association equipment.
6 Nothing in this Declaration shall be construed as obligating the Association to provide any of the
7 aforementioned services.

8 **11.8 Lease of Association Property or Common Elements.** The power to lease
9 Association Property or Common Elements, as authorized by the Board, including, but not limited
10 to, the lease of Building roof areas and other Common Elements for antennas or other
11 telecommunications and similar equipment.

12 **11.9 Limitation upon Liability of Association.** Notwithstanding the duty to maintain,
13 repair, replace, insure or reconstruct parts of the Condominium Property, the Association is not
14 liable to Unit Owners or any other Person for injury or damages of any nature, other than for the
15 cost of maintenance and repair of items for which the Association is otherwise responsible, caused
16 by the acts or omissions of any third party, caused by progressive, latent or unknown condition of
17 the Condominium Property, nor for any claims for damages or expenses affiliated with the
18 maintenance and repair of the Condominium Property, except incidental damage to Owner
19 property as provided in Article 9.1.8. The Association has no liability in any case for loss of use
20 or inability to inhabit the Condominium Property during work performed by, or at the direction of
21 the Association, when the Board reasonably believes the property cannot be safely occupied or
22 occupied in a manner that would unreasonably impede the work during said period(s) of time.
23 Without limiting the intended generality of the foregoing, the Association has no liability for loss
24 of use, loss of rental income, alternative housing or subsistence expenses, or loss of value.

25 **NOTWITHSTANDING ANYTHING CONTAINED IN THIS DECLARATION OR IN**
26 **THE CONDOMINIUM DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR**
27 **BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR**
28 **RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF,**
29 **THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF**
30 **ANY PORTION OF THE CONDOMINIUM PROPERTY, INCLUDING, WITHOUT**
31 **LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, TENANTS, INVITEES**
32 **OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE**
33 **GENERILITY OF THE FOREGOING:**

34 **11.9.1 IT IS THE EXPRESS INTENT OF THE CONDOMINIUM**
35 **DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE**
36 **ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE**
37 **THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN, AND ARE**
38 **TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF**
39 **ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM**
40 **PROPERTY AND THE VALUE THEREOF; AND**

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1 **11.9.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN**
2 **CREATED, TO ACT AS AN ENTITY WHICH ENFORCES THE LAWS OF THE**
3 **UNITED STATES, STATE OF FLORIDA, LEE COUNTY, AND/OR ANY OTHER**
4 **JURISDICTION OR FOR THE PREVENTION OF TORTIOUS OR CRIMINAL**
5 **ACTIVITIES; AND**

6 **11.9.3 ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS**
7 **SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH,**
8 **SAFETY AND OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS**
9 **LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A**
10 **DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY**
11 **OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN**
12 **TO BE USED FOR ANY SUCH REASON.**

13 **EACH UNIT OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR**
14 **LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM**
15 **PROPERTY SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO**
16 **HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS**
17 **AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR**
18 **CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE**
19 **ASSOCIATION HAS BEEN DISCLAIMED IN THIS PROVISION.**

20 **AS USED IN THIS ARTICLE, “ASSOCIATION” INCLUDES WITHIN ITS MEANING**
21 **ALL OF THE ASSOCIATION’S DIRECTORS, OFFICERS, COMMITTEE MEMBERS**
22 **AND OTHER PERSONS THE ASSOCIATION MAY BE REQUIRED TO INDEMNIFY,**
23 **TO THE EXTENT AND LIMIT OF SUCH INDEMNITY, AND WITHOUT WAIVING,**
24 **REDUCING OR OTHERWISE MODIFYING COVERAGE OBLIGATIONS OR**
25 **SUBROGATION RIGHTS OF ANY INSURER.**

26 **11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.** Each
27 Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is
28 conducive to the growth of mold and/or mildew. The Board has the authority to adopt reasonable
29 Rules and Regulations regarding maximum or minimum temperatures for Units and/or require that
30 the air conditioning to the Units be set within certain temperature and/or humidity ranges and may
31 require Owners to take such further actions as the Board deems advisable to control humidity and
32 mold and/or mildew growth.

33 The Association is not responsible for the prevention of mold and/or mildew or any damages
34 including, but not limited to, any special or consequential damages, property damages, personal
35 injury, loss of income, emotional distress, death, loss of use, diminution or loss of value of the
36 Unit, economic damages, and adverse health effects relating to, arising from or caused by mold
37 and/or mildew accumulation regardless of the cause of said mold/or mildew. Prevention and
38 remediation of mold within the boundaries of a Unit, or on Common Elements when due to interior
39 Unit conditions or events, is a Unit Owner responsibility.

1 EACH UNIT OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR
2 LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM
3 PROPERTY SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO
4 HAVE AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS,
5 DEMANDS, DAMAGES, CAUSES OF ACTION, LIABILITIES LOSSES AND
6 EXPENSES, WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR
7 UNFORESEEN, THAT SUCH PERSON HAS, OR MAY HAVE IN THE FUTURE, IN
8 LAW OR IN EQUITY AGAINST THE ASSOCIATION, ITS OFFICERS, DIRECTORS,
9 AND COMMITTEE MEMBERS, OR ANY PERSON OR ENTITY THE ASSOCIATION
10 IS OBLIGATED TO INDEMNIFY (AND WITHOUT WAIVING, REDUCING OR
11 OTHERWISE MODIFYING COVERAGE OBLIGATIONS OR SUBROGATION
12 RIGHTS OF ANY INSURER), ARISING OUT OF, RELATING TO, OR IN ANY WAY
13 CONNECTED WITH INDOOR AIR QUALITY, MOISTURE, OR THE GROWTH,
14 RELEASE, DISCHARGE, DISPERSAL OR PRESENCE OF MOLD AND/OR MILDEW
15 OR ANY CHEMICAL OR TOXIN SECRETED THEREFROM.

16 **11.11 Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has
17 accumulated in a Building and Units in sufficient quantities, may present health risks to Persons
18 who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been
19 found in buildings in Florida. Additional information regarding radon and radon testing may be
20 obtained from your county public health department. The foregoing notice is provided for
21 informational purposes only. The Association does not conduct radon testing with respect to the
22 Condominium and specifically disclaims any and all representations or warranties as to the absence
23 of radon gas or radon producing conditions in connection with the Condominium. The Association
24 is not responsible for mitigating the existence of radon inside of Units and may establish such
25 conditions as the Board deems appropriate if the Association approves an Owner request to install
26 mitigation equipment.

27 EACH UNIT OWNER (BY VIRTUE OF HIS OR HER ACCEPTANCE OF TITLE TO HIS
28 OR HER UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN
29 UPON/OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM
30 PROPERTY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR MAKING SUCH
31 USES) SHALL BE BOUND BY THIS PROVISION AND SHALL BE DEEMED TO HAVE
32 AUTOMATICALLY WAIVED ANY AND ALL CLAIMS, OBLIGATIONS, DEMANDS,
33 DAMAGES, CAUSES OF ACTION, LIABILITIES, LOSSES AND EXPENSES,
34 WHETHER NOW KNOWN OR HEREAFTER KNOWN, FORESEEN OR
35 UNFORESEEN, THAT PURCHASER HAS, OR MAY HAVE IN THE FUTURE, IN LAW
36 OR IN EQUITY ARISING OUT OF, RELATING TO, OR IN ANY WAY CONNECTED
37 WITH INDOOR AIR QUALITY, RADON GAS, OR THE RELEASE, DISCHARGE,
38 DISPERSAL OR PRESENCE OF RADON GAS. THE PROVISIONS OF THIS ARTICLE
39 SHALL ALSO INURE TO THE BENEFIT OF THE ASSOCIATION, ITS OFFICERS,
40 DIRECTORS, MEMBERS, AND AGENTS WHICH SHALL BE FULLY PROTECTED
41 HEREBY.

1 **11.12 Atmospheric Conditions, Pollution, Contaminants, Communicable Diseases,**
2 **Viruses, and Public Health.** Notwithstanding the duty to maintain, repair, replace, insure, or
3 reconstruct parts of the Condominium Property or Association Property, the Association is not
4 liable to Unit Owners or any other Person for injury or damages of any nature caused by
5 atmospheric or natural conditions, including but not limited to red tide, pollution, algae, natural
6 debris, viruses, airborne or other communicable diseases, or acts of God, which shall collectively
7 be referred to herein as “public health” for simplicity. Without limiting the intended generality of
8 the forgoing, the Association has no liability for loss of use, loss of rental income, alternative
9 housing or subsistent expenses, loss of value, personal or property injury, or death arising from
10 public health matters.

11 **NOTWITHSTANDING ANYTHING CONTAINED IN THIS DECLARATION OR IN**
12 **THE CONDOMINIUM DOCUMENTS OR ANY OTHER DOCUMENT GOVERNING OR**
13 **BINDING THE ASSOCIATION, THE ASSOCIATION SHALL NOT BE LIABLE OR**
14 **RESPONSIBLE FOR, OR IN ANY MANNER BE A GUARANTOR OR INSURER OF,**
15 **THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF**
16 **ANY PORTION OF THE CONDOMINIUM PROPERTY AND/OR ASSOCIATION**
17 **PROPERTY, INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR**
18 **FAMILIES, GUESTS, TENANTS, INVITEES OR FOR ANY PROPERTY OF ANY SUCH**
19 **PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:**

20 **11.12.1 IT IS THE EXPRESS INTENT OF THE CONDOMINIUM**
21 **DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE**
22 **ENFORCEABLE BY THE ASSOCIATION, AND WHICH GOVERN OR REGULATE**
23 **THE USE OF THE CONDOMINIUM PROPERTY, HAVE BEEN WRITTEN, AND ARE**
24 **TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF**
25 **ENHANCING AND MAINTAINING THE ENJOYMENT OF THE CONDOMINIUM**
26 **PROPERTY AND/OR ASSOCIATION PROPERTY AND THE VALUE THEREOF; AND**

27 **11.12.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT**
28 **BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES THE LAWS,**
29 **POLICIES OR RECOMMENDATIONS OF THE UNITED STATES, STATE OF**
30 **FLORIDA, LEE COUNTY, AND/OR ANY OTHER JURISDICTION REGARDING**
31 **MATTERS OF PUBLIC HEALTH OR FOR THE PREVENTION OF INJURIES OR**
32 **DAMAGES TO PERSONS OR PROPERTY ARISING THEREFROM; AND**

33 **11.12.3 ANY PROVISIONS OF THE CONDOMINIUM DOCUMENTS**
34 **SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH,**
35 **SAFETY AND OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS**
36 **LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A**
37 **DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY**
38 **OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN**
39 **TO BE USED FOR ANY SUCH REASON.**

1 EACH UNIT OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR
2 LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM
3 PROPERTY AND/OR ASSOCIATION PROPERTY SHALL BE BOUND BY THIS
4 PROVISION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY
5 AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE
6 ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR
7 WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS
8 PROVISION.

9 AS USED IN THIS ARTICLE, "ASSOCIATION" INCLUDES WITHIN ITS MEANING
10 ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS
11 AND OTHER PERSONS THE ASSOCIATION MAY BE REQUIRED TO INDEMNIFY,
12 TO THE EXTENT AND LIMIT OF SUCH INDEMNITY, AND WITHOUT WAIVING,
13 REDUCING OR OTHERWISE MODIFYING COVERAGE OBLIGATIONS OR
14 SUBROGATION RIGHTS OF ANY INSURER.

15 NOTHING HEREIN SHALL PREVENT OR LIMIT THE ASSOCIATION FROM
16 EXERCISING THE POWERS SET FORTH IN THE CONDOMINIUM DOCUMENTS OR
17 APPLICABLE LAW, INCLUDING THE EXERCISE OF EMERGENCY POWERS AS
18 WELL AS THE GENERAL ADMINISTRATION OF THE CONDOMINIUM PROPERTY
19 AND ASSOCIATION PROPERTY AND THE AFFAIRS OF THE ASSOCIATION.
20 HOWEVER, THE EXERCISE OF SUCH POWERS SHALL NOT BE DEEMED TO
21 WAIVE, ABANDON OR LESSEN THE PROVISIONS OF THIS ARTICLE 11.2, WHICH
22 HAVE BEEN APPROVED BY THE OWNERS FOR THE COLLECTIVE PROTECTION
23 OF THE ASSOCIATION.

24 **11.13 Restraint upon Assignment of Shares in Assets.** The share of a Unit Owner in
25 the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any
26 manner except as an appurtenance to his or her Unit.

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

29 **12.1 Authority to Purchase Insurance.** All insurance policies shall be purchased by
30 the Association for the benefit of the Association and the Unit Owners and their mortgagees as
31 their respective interests may appear.

32 **12.2 Coverage.** All provisions pertaining to insurance coverage shall be construed in
33 accordance with the Act, and insurance policies purchased by the Association is intended to
34 comply with all coverage requirements of the Act.

35 **12.2.1 Property Insurance.** Except as otherwise provided in this Declaration, the
36 Association shall obtain and maintain fire, wind, general property and extended coverage
37 insurance with a responsible insurance company upon the Insurable Improvements of the

1 Condominium, for the replacement value thereof, including coverage for changes in building
2 codes, unless the Board determines that such coverage for changes in building codes is not
3 reasonably available or commercially practicable, and less a commercially reasonable deductible
4 as determined by the Board, provided the Board may exclude landscaping and exterior
5 improvements not customarily insured by condominium associations in the locality, and other
6 customary exclusions such as foundation and excavation costs, in its discretion. The Association
7 shall determine the replacement value of the Insurable Improvements through independent
8 appraisal, at least every thirty-six (36) months, so long as required by the Act. The Board shall
9 establish deductibles, at a duly noticed meeting of the Board, and shall give notice of such meeting,
10 and determine the deductibles, as required by the Act, so long as required by the Act.
11 Notwithstanding the foregoing requirement, the Association, through its Board, will have fulfilled
12 its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may
13 be reasonably available from time to time given market and economic conditions, provided such
14 coverage shall always meet the minimum level of adequate coverage required by the Act. Unless
15 otherwise required by law, and subject to Article 1.26, the Unit Owners are responsible to insure
16 all alterations, modifications or additions made to the Unit, Limited Common Elements, or
17 Common Elements by said Unit Owner, or his or her predecessor in interest or title, except
18 insurance of elements previously insured by the Association which have been replaced with code
19 compliant elements, which shall be considered Insurable Improvements, except as may otherwise
20 be provided by law, or except where a master policy purchased by the Association includes
21 coverage for such alterations, modifications, or additions, when the Declaration requires their
22 insurance and when such policies are purchased such required coverage shall be presumed.

23 **12.2.2 Flood.** The Association shall use its best efforts to obtain and maintain
24 adequate flood insurance, for replacement value, less a commercially reasonable deductible as
25 determined by the Board, and less foundation and excavation costs if determined by the Board.
26 The Association will have discharged its responsibility to use its “best efforts” to obtain “adequate”
27 flood insurance if it is able to purchase flood insurance up to the limits available through the
28 National Flood Insurance Program (NFIP), or through any similar federally-sponsored or related
29 program, or through private carriers with similar coverage, for premium rates that are generally
30 commensurate with flood insurance premium rates for condominiums in the local area.

31 **12.2.3 Liability Insurance.** The Association shall obtain and maintain public
32 liability insurance covering all of the Common Elements and Association Property and insuring
33 the Association and the Unit Owners as their interest may appear in such amount as the Board may
34 deem appropriate. The Board has the authority to compromise and settle all claims against the
35 Association or upon insurance policies held by the Association. The Unit Owners shall have no
36 personal liability upon such claims, except as may be otherwise provided by law, and nothing
37 herein contained shall in any way be construed as imposing upon the Association a duty to assess
38 Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of
39 insurance coverage.

1 **12.2.4 Fidelity Bond.** The Association shall obtain and maintain insurance or
2 fidelity bonding of all Persons who control or disburse funds of the Association. The insurance
3 policy or fidelity bond must cover the maximum funds that will be in the custody of the Association
4 or its management agent at any one (1) time. As used in this paragraph, the term “Persons who
5 control or disburse funds of the Association” includes, but is not limited to, those individuals
6 authorized to sign checks on behalf of the Association, and the President, Secretary, and Treasurer
7 of the Association.

8 **12.2.5 Worker’s Compensation.** Such worker’s compensation coverage as may
9 be required by law or deemed advisable by the Board.

10 **12.2.6 Other Insurance.** Such other insurance as the Board may from time to time
11 deem to be necessary, including, but not limited to, Errors and Omissions Officers and Directors
12 Liability insurance coverage and insurance for the benefit of its employees.

13 **12.3 Deductible and Other Insurance Features.** The Board shall establish the amount
14 of the deductible under the insurance policies, and other features (including, but not limited to,
15 exclusions), as it deems desirable and financially expedient, in the exercise of its business
16 judgment, and in the method provided by the Act. The deductible and other features shall be
17 consistent with industry standards and prevailing practice for communities of similar size and age,
18 and having similar construction and facilities in the locale where the Condominium Property is
19 situated.

20 **12.4 Premiums.** Premiums upon insurance policies purchased by the Association are
21 paid by the Association as a Common Expense.

22 **12.5 Insurance Shares or Proceeds.** Insurance proceeds of policies purchased by the
23 Association covering property losses shall be paid to the Association, and all policies and
24 endorsements thereon shall be deposited with the Association. The duty of the Association is to
25 receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein
26 and for the benefit of the Unit Owners and their mortgagees in the following shares:

27 **12.5.1 Common Elements; Proceeds on Account of Damage to Common**
28 **Elements.** An undivided share for each Unit Owner, such share being the same as the undivided
29 share in the Common Expenses appurtenant to the Unit.

30 **12.5.2 Unit; Proceeds on Account of Damage to Units Shall be Held in the**
31 **Following Undivided Shares.**

32 **12.5.2.1 Surplus.** It shall be presumed that the first monies disbursed
33 in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a
34 balance in a construction fund after payment of all costs relating to the reconstruction and repair
35 for which the fund is established, such balance shall be distributed in the manner elsewhere stated.

1 **12.5.2.2 Common Elements and Units.** When both Common
2 Elements and those portions of the Unit insured by the Association are damaged by a common
3 occurrence, the proceeds of insurance shall be allocated between damage to Common Elements,
4 Limited Common Elements, and Units as the Board shall determine. It shall be presumed that
5 when there are insurance proceeds received on account of a common Casualty or covered cause of
6 loss under the Association’s applicable insurance policy, but insufficient proceeds for Casualty or
7 covered cause of loss repair (including, but not limited to, shortfalls occasioned by the existence
8 of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then
9 to damage to Units and Limited Common Elements, it being the intent of this provision that when
10 there is a common Casualty loss or covered cause of loss under the Association’s applicable
11 insurance policy causing significant damage to the premises, the shortfalls occasioned by
12 deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common
13 Elements and not applied first to Unit damage. In situations where the Association receives
14 insurance proceeds for an item which the Act generally requires to be insured by the Owner (by
15 way of example, but not limitation, flood insurance proceeds for cabinetry), the Association may
16 disburse these funds to the Owner and may require such assurances as the Board determines
17 reasonable, including, but not limited to, the requirement of the signing of a release, and/or an
18 undertaking to perform the work, and/or requirement that the monies will not be released until the
19 work is complete.

20 **12.5.3 Mortgages.** In the event that a mortgage endorsement has been issued as to
21 a Unit, the share of that Unit Owner is held in trust for the mortgagee and the Unit Owner as their
22 interests may appear; provided, however, that no mortgagee shall have any right to determine or
23 participate in the determination as to whether or not any damaged property shall be reconstructed
24 or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a
25 mortgage debt any insurance proceeds.

26 **12.6 Distribution of Proceeds.** Proceeds of insurance policies received by the
27 Association is distributed in the following manner:

28 **12.6.1 Reconstruction or Repair.** If the damage for which the proceeds are paid
29 is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere
30 provided. Any proceeds remaining after defraying such costs shall be distributed to the Unit
31 Owners, or, at the option of the Board, may be deposited in the Association’s reserve fund.

32 **12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner
33 elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or
34 repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination
35 approved pursuant to Article 19.

36 **12.7 Association as Agent.** The Association is irrevocably appointed agent for each
37 Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of
38 any other interest in the Condominium Property or any property in which the Association owns an

1 interest, to adjust all claims arising under insurance policies carried by the Association, and to
2 execute and deliver releases upon the payment of such claim.

3 **13. RECONSTRUCTION AFTER CASUALTY.** If any part of the Condominium Property
4 shall be damaged by Casualty or covered cause of loss under the Association’s applicable insurance
5 policy, whether or not it shall be reconstructed or repaired shall be determined in the following
6 manner:

7 **13.1 Common Elements.** If the damaged improvement is any of the Common Elements,
8 the damaged Common Elements shall be reconstructed or repaired, unless the Condominium is to
9 be terminated as provided elsewhere herein.

10 **13.2 The Buildings.**

11 **13.2.1 Lesser Damage.** If the damage renders less than 50% of the Units in the
12 Condominium uninhabitable, as determined by the Board or governmental agencies of jurisdiction,
13 the damaged property shall be reconstructed or repaired.

14 **13.2.2 Major Damage.** If the damage renders more than 50% of the Units in the
15 Condominium uninhabitable, as determined by the Board or governmental agencies of jurisdiction,
16 the damaged property will be reconstructed or repaired, unless 75% of the entire Voting Interests
17 in the Condominium agree in writing that such reconstruction or repair shall not take place. The
18 decision whether or not to reconstruct or repair shall be made within one hundred eighty (180)
19 days after the Casualty or covered cause of loss under the Association’s applicable insurance
20 policy, provided however that the Board has the authority to extend this period for decision-
21 making, not to exceed five (5) years, to deal with exigencies in communication with Unit Owners
22 caused by natural disasters or other significant casualties, or to deal with delays in obtaining
23 information regarding reconstruction costs or insurance proceeds available for reconstruction.

24 **13.2.3 Plans and Specifications.** Any reconstruction or repair must be
25 substantially in accordance with the plans and specifications for the original Condominium
26 Property, as set forth in the plans and specifications, or if not, then according to plans and
27 specifications approved by the Board, regardless of whether it is a Material Alteration or
28 Substantial Addition as described in Article 9.8, and no vote of the Unit Owners shall be required.

29 **13.2.4 Definition of “Uninhabitable.”** For purposes of this Declaration,
30 “uninhabitable” means that the Board has concluded that the Condominium Property which the
31 Association is required to insure cannot be restored to the condition (or a better condition) in which
32 it existed prior to the Casualty or covered cause of loss under the Association’s applicable
33 insurance policy through available insurance proceeds, plus a Special Assessment against each
34 Unit Owner not to exceed ten percent (10%) of the average fair market value of the Units prior to
35 the Casualty or covered cause of loss, as determined by the Board. This calculation does not
36 include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the
37 Unit Owner’s expense. A governmental agency’s declaration or order that the Condominium

1 Property may not be occupied for a defined period of time due to safety concerns shall not
2 conclusively establish that Units are uninhabitable, provided that the Units can be made safe for
3 occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not
4 Units are “habitable,” a resolution enacted by the Board is binding on all parties, unless wholly
5 arbitrary or contrary to law.

6 **13.3 Responsibility.** All reconstruction work after a Casualty or covered cause of loss
7 under the Association’s applicable insurance policy for damaged items that the Association insures
8 shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction
9 work on portions of the Unit with the prior written consent of the Board. However, such work, and
10 the disbursement of insurance proceeds, may be conditioned upon the approval of the repair
11 methods, the qualifications of the proposed contractor, the contract that is used for that purpose,
12 and reasonable verification of appropriate steps to ensure that the work is done and that the
13 contractor is paid for the performance of said work. Unit Owners shall be responsible for
14 reconstructing those items that the Unit Owners are required to insure. All required governmental
15 permits and approvals must be obtained prior to commencing reconstruction. Assessments for the
16 cost of the work shall be set forth in Article 13.5 below.

17 **13.4 Estimates of Costs.** After a determination is made to rebuild or repair damage to
18 property for which the Association or Unit Owner has the responsibility of reconstruction and
19 repair, the Association or Unit Owner shall promptly obtain reliable and detailed estimates of the
20 cost to rebuild or repair.

21 **13.5 Assessments.** The cost of reconstruction after Casualty for those portions of the
22 Condominium Property required to be insured by the Association is considered a Common
23 Expense, pursuant to Section 718.111(11)(j) of the Act, except as provided elsewhere, including,
24 but not limited to, Section 718.111(11)(n) of the Act.

25 **13.6 Damage Caused by Wear and Tear of the Condominium Property or**
26 **Uninsurable Loss.** Damage to the Condominium Property that is not caused by a Casualty, as
27 defined in Article 1.9 or covered cause of loss under the Association’s applicable insurance policy,
28 shall be repaired or replaced in accordance with the provisions of Article 9 and shall not be subject
29 to this Article 13.

30 **13.7 Termination of Condominium if Not Reconstructed.** If the Owners vote not to
31 reconstruct the Condominium by vote described in Article 13.2.2, the Condominium shall be
32 terminated in accordance with the procedures set forth in Article 19.

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

35 **14.1 Occupancy of Units; Single Family Residence.** A Unit shall be used only as a
36 Single Family residence. No more than six (6) Persons may reside in a two-bedroom Unit. No
37 more than eight (8) Persons (including Unit Owners, Tenants, Residents, their Families, Guests or

1 any other Occupants) may sleep overnight in a Unit. No Unit may be divided or subdivided into a
2 smaller Unit nor any portion sold or otherwise transferred. No Person may reside in a Unit as a
3 Unit Owner, Resident, or Family member or for any reason occupy the Unit on an overnight basis
4 for more than thirty (30) days in a calendar year unless said Person’s occupancy has been
5 specifically approved by the Association, through the Board. This residency approval requirement
6 is not applicable to existing Unit Owners and members of their Family who are residing in or have
7 a present right to occupy the Unit. In considering such requests, the Board may (but shall not be
8 obligated to and shall have no duty to) consider factors set forth in Article 17 of this Declaration,
9 and may charge a reasonable fee for review of residency requests. Visitation by Guests is further
10 governed by Article 15 of this Declaration. Occupancy by Tenants is further governed by Article
11 16 of this Declaration. Units may not be used for commercial or business purposes. Unit Owners
12 and Occupants may use Units for “home office” or “telecommuting” purposes, provided that such
13 uses do not involve customers or clients coming onto the Condominium Property, the posting of
14 any signage in the Condominium, the storage of equipment, products, or materials in the
15 Condominium, nor more than two (2) regular deliveries per day of correspondence or similar items
16 from customary express delivery services. No Person may occupy or otherwise be present within
17 a Unit, or otherwise present on the Condominium Property as a Family member, Occupant, Tenant,
18 Guest, or Invitee if such Person:

19 **14.1.1** Has been convicted of, pled no contest to, or has been released from
20 incarceration, probation or community control for:

21 **14.1.1.1** a capital, first or second degree felony involving violence to
22 Persons within the past ten (10) years; or

23 **14.1.1.2** a first or second degree felony involving illegal drugs within
24 the past ten (10) years; or

25 **14.1.1.3** any drug offence involving the manufacture and/or
26 distribution of illegal drugs regardless of when that conviction, plea or release occurred; or

27 **14.1.1.4** a felony involving sexual battery, sexual abuse, or lewd and
28 lascivious behavior regardless of when that conviction, plea or release occurred;

29 **14.1.2** Has been labeled a sexual offender or a sexual predator by any
30 governmental or quasi-governmental agency regardless of when that label occurred; or

31 **14.1.3** Is currently on probation or community control for a felony involving
32 violence to another or damage to or theft of property.

33 **14.1.4** The conduct of background investigations and the extent of such
34 investigation, if any, shall be as determined by the Board in its discretion.

1 **14.2 Nuisance.** No Unit Owner, or their Tenants, Guests, or Invitees may use the
2 Condominium Property for any immoral, indecent, improper, or unlawful purpose and no use or
3 behavior shall be allowed which will create a public or private nuisance, nor which shall
4 unreasonably interfere with the quiet possession or enjoyment of the Condominium Property,
5 which will increase insurance rates, or which will negatively affect the value of Units. All property
6 shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose
7 of furnishing services and facilities as herein provided for the welfare and enjoyment of the
8 Residents. The Condominium Property shall be used in accordance with all federal, state, and local
9 laws and ordinances.

10 **14.3 Pets.** Pets are prohibited from all areas of the Condominium Property at all times.
11 (Pets have been prohibited since 1986).

12 **14.4 Smoking.** No person shall engage in smoking in or on the Limited Common
13 Element balconies, common walkway, or front entries. The Board may establish further
14 restrictions regarding, smoking on the Common Elements, including prohibiting of same. Smoking
15 shall mean inhaling, exhaling, burning, carrying or possessing any lighted substance, including
16 cigarettes, cigars or pipes. The use of “electronic” or “vapor” cigarettes, cigars, pipes, or similar
17 apparatus, are likewise defined as smoking and are prohibited in the aforementioned areas.

18 **14.5 Additional Restrictions.** Additional use, occupancy, maintenance, transfer and
19 other restrictions are contained in the Rules and Regulations, which may be amended from time to
20 time by the Board. Amendments to the Rules and Regulations may, but need not be, recorded in
21 the Public Records. Additional use, transfer and other restrictions are also contained elsewhere in
22 the Condominium Documents.

23 **15. GUEST OCCUPANCY.** Use or visitation without consideration (payment) distinguishes
24 a Guest usage from a tenancy. Any Person occupying a Unit for more than thirty (30) days in a
25 calendar year regardless of whether any consideration is paid, shall not be considered a Guest, and
26 shall be considered a Resident or Tenant subject to the approval requirements of Article 16 of this
27 Declaration. There are various types of Guest uses, which are regulated as follows:

28 **15.1 Non-Overnight Visitation by Guests When Unit Owner or Tenant is in**
29 **Residence.** Unit Owners and Tenants (and their respective Families) are permitted to have non-
30 overnight Guests, provided that same does not create a nuisance or annoyance to other
31 Condominium Residents, nor prevent their peaceful enjoyment of the premises. The Association
32 may restrict or prohibit Guest visitation by Persons who have committed nuisances upon the
33 Condominium Property or otherwise violated the Condominium Documents in the past, and
34 Persons who have been convicted of or pled no contest to a felony, including, but not limited to,
35 registered sex offenders and Persons who have been convicted of or pled no contest to narcotic
36 offenses. Non-overnight Guests need not be registered with the Association, but may be subject to
37 access control protocols or procedures used generally, if any. Non-overnight Guests are permitted
38 to use the Association facilities only when accompanied by the Unit Owner or Tenant, unless
39 otherwise approved by the Board. The Board may establish additional restrictions on non-

1 overnight Guest usage of Condominium facilities, including, but not limited to, the maximum
2 numbers of Guests who may use common facilities.

3 **15.2 Overnight Guests When Unit Owner or Tenant is in Residence.** Unit Owners
4 and Tenants (and their respective Families) may have related or unrelated overnight Guests, so
5 long as the Unit Owner or Tenant is in simultaneous residence in that Unit. There is no requirement
6 for registration of overnight Guests with the Association when the Unit Owner or Tenant is
7 simultaneously occupying the Unit, but may be subject to access control protocols or procedures
8 used generally, if any. The Association may restrict or prohibit Guest visitation by Persons who
9 have committed nuisances upon the Condominium Property or otherwise violated the
10 Condominium Documents in the past, and Persons who have been convicted of or pled no contest
11 to a felony, including, but not limited to, registered sex offenders and Persons who have been
12 convicted of or pled no contest to narcotic offenses. No more than eight (8) Persons (including the
13 Unit Owners, Tenants, Residents, their Families, Guests or any other Occupants) may sleep
14 overnight in a Unit.

15 **15.3 Non-Overnight Guests in the Absence of the Unit Owner or Tenant.** Unit
16 Owners and Tenants are not permitted to have non-overnight Guests when the Unit Owner or
17 Tenant is absent from the Condominium. Unit Owners and Tenants may have Units inspected by
18 caretakers, friends or relatives. However, such individuals shall not be permitted to use
19 Condominium facilities, such as recreational facilities (including, but not limited to, the pool,
20 parking areas, tennis courts, etc.).

21 **15.4 Overnight Guests in the Absence of the Unit Owner or Tenant.** Tenants are not
22 permitted to have overnight Guests (related or non-related) in the absence of the Tenants'
23 simultaneous residence. Unit Owners are permitted to have overnight Guests in the absence of the
24 Unit Owner subject to the following conditions, and such other Rules and Regulations as may be
25 deemed necessary by the Board to effectuate the residential, non-transient nature of this
26 Condominium. The Association may restrict or prohibit Guest visitation by Persons who have
27 committed nuisances upon the Condominium Property or otherwise violated the Condominium
28 Documents in the past, and Persons who have been convicted of or pled no contest to a felony,
29 including, but not limited to, registered sex offenders and Persons who have been convicted of or
30 pled no contest to narcotic offenses.

31 **15.4.1 Non-Related Overnight Guests** in the absence of the Unit Owner will be
32 limited to two (2) occupancies per calendar year (cumulative as to all Guests and all occupancies
33 by non-related Guests in the absence of the Owner). The limitation on the number of Persons who
34 can occupy a Unit in Article 15.2 applies. Ten (10) days prior notice to the Association is required.

35 **15.4.2 Related Overnight Guests** may occupy a Unit in the absence of the Unit
36 Owner. For the purpose of this provision, "related" means at least one (1) adult who is occupying
37 the Unit on an overnight basis, in the absence of the Unit Owner, is related to the Unit Owner or
38 Primary Occupant (by blood, marriage, domestic partnership or adoption) to the following degree:
39 spouse, parent, grandparent, child, grandchild, or sibling. The limitation on the number of Persons

1 who can occupy a Unit in Article 15.2 applies. Ten (10) days prior notice to the Association is
2 required.

3 **15.5 Additional Board Authority.** The conduct of background investigations and the
4 extent of such investigation, if any, shall be as determined by the Board in its discretion. The Board
5 may promulgate such rules, policies, and procedures as are necessary to implement this Article.
6 The Board may, at a duly noticed meeting, temporarily suspend or permanently ban a Guest from
7 entering the Condominium Property if the Board finds that such Person has engaged in a serious
8 violation of the Condominium Documents or applicable law upon the Condominium Property, or
9 has engaged in systematic violations of the Condominium Documents or applicable law upon the
10 Condominium Property. The decision of the Board is final and shall not be subject to any
11 requirement for a hearing before any type of Committee. In the event the Association has
12 reasonable cause to believe that Unit Owners are circumventing rental restrictions by receiving
13 consideration for occupancies which are held out as guest occupancies, the Association may
14 require proposed Guest Occupants to submit proof of familial relationship, an affidavit as to
15 absence of payment for the right to occupy the premises, or other proof that the leasing provisions
16 of Article 16 are not being violated.

17 **16. LEASING.** The lease of a Unit is defined as occupancy of the Unit by any Person other
18 than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by
19 the non-owner involves consideration (the payment of money, the exchange of goods or services,
20 or any other exchange of value). The term “leasing” and “renting” are used interchangeably in this
21 Declaration. The term “Tenant” and “Lessee” are likewise used interchangeably. All leases must
22 be in writing. Should a Unit Owner wish to lease his or her Unit, he or she shall furnish the
23 Association with a copy of the proposed lease, the name of the proposed Tenant, the names of all
24 proposed Residents, and such other information as the Association may reasonably require. Any
25 Person occupying the Unit as a Resident after initial approval shall be subject to a separate
26 application and approval process. The Association has thirty (30) days from the receipt of notice
27 and all required information within which to approve or disapprove of the proposed lease or
28 proposed Tenants or Residents. The Association shall give the Unit Owner written notice of its
29 decision within said period. No individual rooms may be rented and no transient tenants may be
30 accommodated. “Rent-sharing” and subleasing are prohibited. All leases shall be for a minimum
31 period of thirty (30) continuous days, or one (1) continuous calendar month, and for a maximum
32 period of six (6) continuous calendar months, and no Unit may be rented for more than six (6)
33 months or one hundred eighty (180) days (whichever is greater) during any calendar year. Leases
34 may be extended or renewed, subject to Board approval. No Unit Owner, nor anyone on their behalf,
35 shall publish or cause to be published any advertisement of any type in any form of media, including,
36 but not limited to, television, radio, internet website, newspaper, magazine, or trade publication, that
37 indicates that a Unit may be leased for anything less than the minimum period of thirty (30)
38 continuous days, or one (1) continuous calendar month, and for a maximum period of six (6)
39 continuous calendar months, and no Unit may be rented for more than six (6) months or one
40 hundred eighty (180) days (whichever is greater) during any calendar year.

1 **16.1 Board Right of Approval.** The Board has the authority to approve or disapprove
2 all leases and renewals or extensions thereof, which authority may be delegated to an Officer, a
3 Committee, or an agent. No Person may occupy a Unit as a Tenant, Family member of a Tenant,
4 Resident, or otherwise without prior approval of the Board. The Board has the authority to
5 promulgate or use a uniform lease application and require such other information from the
6 proposed Tenant and all proposed Residents as the Board deems appropriate under the
7 circumstances. The Board may require an interview of any proposed Tenant and all proposed
8 Residents of a Unit as a condition for approval. The Board may, but shall not be obligated or have
9 the duty to, conduct criminal background investigation in connection with proposed leases.

10 **16.2 Tenant Conduct; Remedies.** All leases shall be on a uniform form of lease or lease
11 addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will
12 provide, or be deemed to provide, that the Tenants have read and agreed to be bound by the
13 Condominium Documents. The uniform lease or addendum and other leases shall further provide,
14 or be deemed to provide, that any violation of the Condominium Documents shall constitute a
15 material breach of the lease and subject the Tenant to termination of the lease and/or eviction as
16 well as any other remedy afforded by the Condominium Documents or Florida law. If a Tenant,
17 Resident, other Unit Occupant, Guest, or Invitee fails to abide by the Condominium Documents,
18 the Unit Owner(s) shall be responsible for the conduct of the Tenants, Residents, Occupants,
19 Guests, or Invitees and shall be subject to all remedies set forth in the Condominium Documents
20 and Florida law, without waiver of any remedy available to the Association as to the Tenant. The
21 Unit Owner has the duty to bring his or her Tenant's conduct (and that of the other Unit Residents,
22 Occupants, Guests, or Invitees) into compliance with the Condominium Documents by whatever
23 action is necessary, including without limitation the institution of eviction proceedings without
24 notice to cure, where legally permissible. If the Unit Owner fails to bring the conduct of the Tenant
25 into compliance with the Condominium Documents in a manner deemed acceptable by the
26 Association, or in other circumstances as may be determined by the Board, the Association has the
27 authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the
28 Tenants' noncompliance with the Condominium Documents (or the noncompliance of other
29 Residents, Occupants, Guests, or Invitees), including without limitation the right to terminate a
30 lease and/or institute an action for eviction against the Tenant in the name of the Association in its
31 own right, or as agent of the Unit Owner. The Association has the right to recover any costs or
32 fees, including attorneys' fees, incurred in connection with such actions, from the Unit Owner
33 which shall be secured by a continuing lien in the same manner as assessments for Common
34 Expenses, to wit, secured by a Lien for Charges. Any uniform lease or lease addendum will
35 provide, and all leases will be deemed to provide, that the Association has the authority to direct
36 that all rental income related to the Unit be paid to the Association until all past due and current
37 obligations of the Association have been paid in full, including, but not limited to, all past due
38 Assessments, Charges, other monetary obligations, late fees, interest, attorneys' fees and cost and
39 expenses of collection.

40 **16.3 Security Deposit.** The Board has the authority, as a condition of granting approval
41 to a lease or renewal or extension thereof, to require that a prospective Tenant or Unit Owner place

1 a security deposit in an amount not to exceed the equivalent of one (1) month's rent into an escrow
2 account maintained by the Association to protect against damage to the Common Elements or
3 Association Property. Payment of interest, claims against the deposit, refunds, and disputes under
4 this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the
5 Florida Statutes (2021), as amended from time to time.

6 **16.4 Approval Process; Disapproval.** Any Unit Owner intending to lease his or her
7 Unit shall submit a copy of the proposed lease, an application, and any other requested information
8 and required fees at least thirty (30) days in advance of the commencement of the lease or renewal
9 or extension term. Upon receipt of all information and fees required by Association and an
10 interview (if requested by the Board), the Association has the duty to approve or disapprove all
11 proposed leases within thirty (30) days of receipt of such information for approval and the
12 completion of the Tenant/Resident interview (if required), by sending written notification to the
13 Unit Owner within such time frame. All requests for approval not acted upon within thirty (30)
14 days shall be deemed approved. Applications for renewals or extensions of lease agreements shall
15 be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the
16 Association disapproves a proposed lease or renewal or extension, the Unit Owner shall receive a
17 short statement indicating the reason for the disapproval, and the lease shall not be made, renewed,
18 or extended. The Association has no duty to provide an alternate Tenant nor does it assume any
19 responsibility for the denial of a lease application if any denial is based upon any of the following
20 factors:

21 **16.4.1** The Person seeking approval (which includes all proposed Occupants or
22 Residents) has been convicted of, pled no contest to, or has been released from incarceration,
23 probation or community control for:

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

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

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

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

32 **16.4.2** The Person seeking approval has been labeled a sexual offender or a sexual
33 predator by any governmental or quasi-governmental agency regardless of when that label
34 occurred;

35 **16.4.3** The Person seeking approval is currently on probation or community
36 control for a felony involving violence to another or damage to or theft of property;

1 **16.4.4** The application for approval on its face, facts discovered in connection with
2 the Association’s investigation, or the conduct of the applicant, indicate that the Person seeking
3 approval intends to conduct himself or herself in a manner inconsistent with the Condominium
4 Documents. By way of example, but not limitation, a Tenant taking possession of the premises
5 prior to approval by the Association as provided for herein shall constitute a presumption that the
6 applicant’s conduct is inconsistent with the Condominium Documents and may constitute grounds
7 for denial;

8 **16.4.5** The Person seeking approval has a history of disruptive behavior or
9 disregard for the rights or property of others as evidenced by his or her conduct in other housing
10 facilities or associations, or by his or her conduct in this Condominium as a Tenant, Resident,
11 Occupant or Guest;

12 **16.4.6** The Unit Owner or Person seeking approval has failed to provide the
13 information, fees or appearances required to process the application in a timely manner or has
14 made material misstatements or withheld material/information during the application process; or

15 **16.4.7** All Assessments, fines and other Charges and monetary obligations against
16 the Unit and/or Unit Owner have not been paid in full.

17 **16.5 Liability.** The liability of the Unit Owner under the Condominium Documents shall
18 continue notwithstanding the fact that he or she may have leased or rented his or her interest in the
19 Unit as provided herein.

20 **16.6 Association Fee.** The Unit Owner or Tenant seeking approval of a lease of a Unit
21 shall pay a transfer fee for each applicant in an amount determined by the Board, which unless
22 otherwise specified, shall be the maximum amount permitted by law. No charge shall be made in
23 connection with an extension or renewal of a lease.

24 **17. APPROVAL OF SALES AND TITLE TRANSFERS.** In order to maintain a community
25 of congenial Unit Owners who are financially responsible, and thus protect the value of the Units,
26 the use and transfer of Units by any Owner is subject to the following provisions as long as the
27 Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

28 **17.1 Forms of Ownership.**

29 **17.1.1 Ownership by Individuals.** A Unit may be owned by one (1) natural person
30 who has qualified and been approved as elsewhere provided herein.

31 **17.1.2 Co-Ownership.** Co-ownership of Units may be permitted. If the co-owners
32 are other than spouses, the Board shall condition its approval upon the designation of one (1)
33 approved natural person as “Primary Occupant.” Spouses who are co-owners shall both be
34 designated as “Primary Occupants.” Two (2) Persons may, in the discretion of the Board and upon
35 request, be each designated as “Primary Occupants.” The intent of this provision is to allow

1 flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit
2 may be used as a short-term or transient accommodations for several entities, individuals or
3 families as a timeshare, a shared Unit, fractional ownership, or used as Guest accommodations for
4 employees, customers, or Guests of Units owned by business entities, religious, or charitable
5 organizations, and the like. The use of the Unit by other Persons shall be as if the Primary Occupant
6 was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of
7 ownership by sale or gift subject to the provisions of the Condominium Documents. No more than
8 one (1) change in Primary Occupant will be approved in any twelve (12) month period, except in
9 the case of the death of the Primary Occupant, or when a Primary Occupant designates a spouse
10 as the Primary Occupant. Any new Primary Occupant shall be subject to review and approval by
11 the Association in the same manner as a transfer of title. No time share estates may be created.
12 “Unit Sharing” by multiple families and “Fractional Ownership” are prohibited.

13 **17.1.3 Ownership by Corporations, Partnerships, Limited Liability**
14 **Companies, Trusts, or Other Artificial Entities.** A Unit may be owned in trust, or by a
15 corporation, partnership, limited liability company, or other entity, which is not a natural person,
16 if approved in the manner provided elsewhere herein. The intent of this provision is to allow
17 flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit
18 may be used as a short-term or transient accommodations for several entities, individuals or
19 families as a timeshare, a shared Unit, fractional ownership, or used as Guest accommodations for
20 employees, customers, or Guests of Units owned by business entities, religious, or charitable
21 organizations, and the like. The approval of a partnership, trustee, corporation, limited liability
22 company, or other entity as a Unit Owner is conditioned upon designation by the Owner of one (1)
23 natural person to be the “Primary Occupant.” As a condition of approval of a transfer to such entity,
24 the Board may require a personal guarantee from the Primary Occupant or other Person acceptable
25 to the Board for payment of all Assessments, Charges, and other monetary obligations (including,
26 but not limited to, use fees and fines) and for the liabilities affiliated with compliance with the
27 Condominium Documents, including, but not limited to, damages and awards of prevailing party
28 attorneys’ fees. The use of the Unit by other Persons shall be as if the Primary Occupant were the
29 only actual Unit Owner. The Primary Occupant shall be the Person entitled to vote on behalf of
30 the Unit, exercise rights of membership, and discharge the responsibilities incident thereto. Any
31 change in this Primary Occupant shall be treated as a transfer of ownership by sale or gift subject
32 to the provisions of the Condominium Documents. No more than one (1) change in designation of
33 Primary Occupant will be approved in any twelve (12) month period, except in the case of the
34 death of the Primary Occupant. Any new Primary Occupant shall be subject to review and approval
35 by the Association in the same manner as a transfer of title.

36 **17.1.4 Life Estate.** A Unit may be subject to a life estate, either by operation of
37 law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall
38 be the only Member from such Unit, and occupancy of the Unit shall be as if the life tenant were
39 the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have
40 no occupancy right unless separately approved by the Association. The life tenant shall be liable
41 for all Assessments and Charges against the Unit. Any vote, consent or approval required by the

1 Condominium Documents or law may be given by the life tenant alone, and the vote, consent or
2 approval of the holders of the remainder interest shall not be required. If there is more than one (1)
3 life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy
4 rights.

5 **17.2 Transfers Subject to Approval.**

6 **17.2.1 Sale or Other Transfer.** No Unit Owner may dispose of a Unit or any
7 interest in same by sale or other title transfer without prior written approval of the Board. No Unit
8 Owner may dispose of a Unit or any interest therein by other means (including agreement for deed,
9 installment sales contract, lease-option, or other similar transactions) without prior written
10 approval by the Board. Review and approval of transfer applications may be delegated to an
11 Officer, a Committee, or an agent, provided that approval of a transfer shall not be denied, unless
12 approved by a majority of the Board.

13 **17.2.2 Gift.** If any Unit Owner is to acquire his or her title by gift, his or her
14 ownership of his or her Unit shall be subject to the prior approval of the Board. Notice must be
15 given at least thirty (30) days prior to the intended closing or title transfer date.

16 **17.2.3 Devise or Inheritance.** If any Person shall acquire his or her title by devise,
17 inheritance or through other succession laws, the continuance of his or her ownership of his or her
18 Unit shall be subject to the approval of the Board.

19 **17.2.4 Other Transfers.** If any Unit Owner shall acquire his or her title by any
20 manner not considered in the foregoing subsections, the continuance of his or her ownership of
21 such Unit shall be subject to the approval of the Board. If any Person acquires title in any manner
22 not considered in the foregoing subsections, that Person has no right to occupy or use the Unit
23 before being approved by the Board under the procedures outlined below.

24 **17.3 Approval by Association.** The approval of the Association that is required for the
25 transfer of ownership of Units shall be obtained in the following manner:

26 **17.3.1 Notice to Board of Directors.**

27 **17.3.1.1 Sale or Other Transfer.** A Unit Owner intending to make a
28 bona fide sale or other title transfer of his or her Unit or any interest in it, including gifts, transfers
29 to artificial entities, and the grant of partial estates, shall give to the Board notice of such intention,
30 together with the name and address of the intended grantee, an executed copy of the purchase
31 contract and its exhibits, or other documentation evidencing the transfer and such other
32 information concerning the intended grantee and the transaction as the Board may reasonably
33 require. The Board may require, without limitation, credit history, a criminal background
34 investigation, past residency or employment verification, personal references, and a personal
35 interview with the purchaser(s) and all proposed Unit Occupants.

1 **17.3.1.2 Devise or Inheritance.** A Unit Owner who has obtained his
2 or her title by devise or inheritance, or operation of succession laws, shall give to the Board notice
3 of the acquiring of his or her title, together with such information concerning the Unit Owner as
4 the Board may reasonably require (including that set forth in Article 17.3.1.1), and a certified copy
5 of the instrument evidencing the Owner's title.

6 **17.3.1.3 Failure to Give Notice.** If the above-required notice to the
7 Board is not given, then at any time after receiving knowledge of a transaction or event transferring
8 ownership or possession of a Unit, the Board at its election and without notice may approve or
9 disapprove the transaction or ownership. If the Board disapproves the transaction or ownership,
10 the Board shall proceed as if it had received the required notice on the date of such disapproval.

11 **17.3.2 Approval by Association.**

12 **17.3.2.1 Sale or Other Title Transfer.** If the proposed transaction is
13 a sale or other prospective title transfer, then within thirty (30) days after receipt of such notice
14 and information, including a personal interview if requested by Board, the Board must either
15 approve or disapprove the proposed transaction.

16 **17.3.2.2 Devise or Inheritance.** If the Unit Owner giving notice has
17 acquired his or her title by devise, inheritance, or through succession law, then within thirty (30)
18 days after receipt of such notice and information, including a personal interview if requested by
19 the Board, the Board must either approve or disapprove the continuance of the Unit Owner's
20 ownership of his or her Unit.

21 **17.3.2.3 Approval of Occupant.** If the grantee is a corporation,
22 partnership, trust, limited liability company, other entity, or more than one (1) individual who are
23 not spouses, the approval of ownership by the corporation, partnership, trust, other entity, or
24 multiple Persons shall be conditioned upon approval of a Primary Occupant.

25 **17.4 Disapproval by Board of Directors.** If the Board shall disapprove a transfer or
26 continuance of ownership of a Unit, the matter shall be disposed of in the following manner:

27 **17.4.1 Sale or Other Arms-Length Transaction to Bona Fide Third Party.** If
28 the proposed transaction is a sale or other arms-length transfer to a bona fide third party purchaser,
29 and has been disapproved without good cause, then within thirty (30) days after receipt of such
30 notice and information, the Association shall deliver or mail by certified mail to the Unit Owner
31 an agreement to purchase the Unit concerned by a purchaser approved by the Board, or the
32 Association itself, who will purchase and to whom the Unit Owner must sell the Unit upon the
33 following terms:

34 **17.4.1.1**At the option of the Association to be stated in the
35 agreement, the price to be paid shall be that stated in the disapproved contract to sell or shall be
36 the fair market value determined by arbitration in accordance with the then existing rules of the

1 American Arbitration Association, except that the arbitrators shall be two (2) appraisers, one (1)
2 of whom shall be appointed by the Unit Owner and the other of whom shall be appointed by the
3 Association, who shall base their determination upon an average of their appraisals of the Unit;
4 and a judgment of specific performance of the sale upon the award rendered by the arbitrators may
5 be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by
6 the parties.

7 **17.4.1.2** The purchase price shall be paid in cash. The sale shall be
8 closed within thirty (30) days after the delivery or mailing of the agreement to purchase, or within
9 ten (10) days after the determination of the sale price if such is by arbitration, whichever is the
10 later. If the Association shall fail to itself purchase the Unit, or provide a purchaser, or if a
11 purchaser furnished by the Association or the Association shall default in his, her, or their
12 agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be
13 deemed to have been approved, and the Association shall furnish a certificate of approval.

14 **17.4.2 Gifts; Devise; Inheritance; Familial Transfers.** If the Unit Owner giving
15 notice has acquired or will acquire his or her title by gift, devise, inheritance, or succession laws
16 or in any other manner, and if the Board wishes to disapprove the transfer or continuance of
17 ownership without good cause, then within thirty (30) days after receipt from the Unit Owner of
18 the notice and information required to be furnished, the Association shall deliver or mail by
19 certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser
20 approved by the Board (including the Association itself) who will purchase and to whom the Unit
21 Owner must sell the Unit upon the following terms:

22 **17.4.2.1** The sale price shall be the fair market value determined by
23 agreement between the grantor and grantee within thirty (30) days from the delivery or mailing of
24 such agreement. In the absence of agreement as to price, or where transfers are made for less than
25 bona fide value, the price shall be determined by arbitration in accordance with the then existing
26 rules of the American Arbitration Association, except that the arbitrators shall be two (2)
27 appraisers, one (1) of whom shall be appointed by the Association and the other of whom shall be
28 appointed by the Unit Owner, who shall base their determination upon an average of their
29 appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered
30 by the arbitrators may be entered in any court of competent jurisdiction. The expense of the
31 arbitration shall be shared by the parties.

32 **17.4.2.2** The purchase price shall be paid in cash. The sale shall be
33 closed within ten (10) days following the determination of the sale price. If the Association shall
34 fail to purchase the Unit or provide a purchaser, or if the Association or a purchaser furnished by
35 the Association shall default in his, her, or their agreement to purchase, then notwithstanding the
36 disapproval, such transfer ownership shall be deemed to have been approved, and the Association
37 shall furnish a certificate of approval as elsewhere provided.

38 **17.4.3 Disapproval for Good Cause.** Disapproval of title transfers or the
39 continuation of ownership pursuant to this Article 17 shall be made by the Board if it is determined

1 that the potential Unit Owner does not facially qualify for membership in the Association, or if the
2 proposed transaction will result in a violation of the Condominium Documents. The following may
3 be deemed to constitute good cause for disapproval on the grounds that the proposed purchaser
4 does not facially qualify for membership in the Association or the proposed transaction will result
5 in a violation of the Condominium Documents:

6 **17.4.3.1** The application for approval on its face, or subsequent
7 investigation thereof, indicates that the Person seeking approval (which shall hereinafter include
8 all proposed Occupants or Residents) intends to hold title, use the Unit, or otherwise act or conduct
9 himself or herself in a manner inconsistent with the Condominium Documents;

10 **17.4.3.2** The Person seeking approval has been convicted of, pled no
11 contest to, or has been released from incarceration, probation or community control for:

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

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

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

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

20 **17.4.3.3** The Person seeking approval has been labeled a sexual
21 offender or a sexual predator by any governmental or quasi-governmental agency regardless of
22 when that label occurred;

23 **17.4.3.4** The Person seeking approval is currently on probation or
24 community control for a felony involving violence to another or damage to or theft of property;

25 **17.4.3.5** The Person seeking approval has a record of financial
26 irresponsibility, including without limitation prior foreclosures or bad debts such that the Board
27 reasonably concludes that the applicant is unable to meet his or her financial obligations to the
28 Association;

29 **17.4.3.6** The Person seeking approval failed to provide the
30 information, fees or appearance required to process the application in a timely manner, or has made
31 material misstatements or withheld material/information during the application process; or

32 **17.4.3.7** All Assessments and other Charges against the Unit have not
33 been paid in full, unless the Association has reasonable assurances that said amounts will be paid
34 out of the closing proceeds.

1 If the Board disapproves a transfer for good cause, the Association has no duty to purchase the
2 Unit or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be
3 rescinded in the manner determined by the Board. The conduct of background investigations and
4 the extent of such investigation, if any, shall be as determined by the Board in its discretion.

5 **17.5 Transfer Fee.** The Association may charge a processing fee for the approval of
6 transfers of title. The fee may not exceed the maximum permitted by law per transaction. The
7 Association or its authorized agent may also charge a reasonable fee for the preparation of a
8 certificate, commonly known as an estoppel certificate, stating all assessments and other monies
9 owed to the Association by the Unit Owner with respect to the Condominium Parcel. The fee for
10 the preparation of such certificate shall be established by a written resolution of the Board or
11 provided for in a management, bookkeeping, or maintenance contract.

12 **17.6 Exceptions.** The foregoing provisions of this Article 17, entitled “Approval of
13 Sales and Title Transfers,” shall not apply to a transfer to or purchase by a bank, life insurance
14 company, savings and loan association, or other bona fide mortgagee that acquires its title as the
15 result of owning a purchase money first mortgage upon the Unit concerned; this shall be so whether
16 the title is acquired by deed from the mortgagor or through foreclosure proceedings. Further
17 exempt shall be purchasers at tax deed sales, judicial sales, and governmental levies. However, a
18 transferee from a first mortgagee or other exempt acquirer of title shall be required to be approved
19 by the Association as a condition of ownership and holding title to a Unit.

20 **17.7 Unauthorized Transactions.** Any sale, lease, mortgage or other transfer of
21 ownership or possession not authorized pursuant to the terms of this Declaration shall be void
22 unless subsequently approved by the Association.

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

25 **18.1 Proposal of Amendments.** An amendment may be proposed by the President of
26 the Association, the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

27 **18.2 Proposed Amendment Format.** Proposals to amend the existing Declaration of
28 Condominium shall contain the full text of the article to be amended. New words shall be
29 underlined and words to be deleted shall be ~~lined through~~. If the proposed change is so extensive
30 that this procedure would hinder rather than assist understanding, a notation must be inserted
31 immediately preceding the proposed amendment saying, “SUBSTANTIAL REWORDING OF
32 DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER ____ FOR PRESENT
33 TEXT.”

34 **18.3 Notice.** The subject matter of proposed amendments shall be included in the notice
35 of any meeting at which a proposed amendment is to be considered or in connection with
36 documentation for action without a meeting.

1 **18.4 Adoption of Amendments.** A resolution for the adoption of a proposed
2 amendment may be adopted by a vote of at least two-thirds (2/3^{rds}) of the Voting Interests of the
3 Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum
4 has been attained, or by the written agreement of at least two-thirds (2/3^{rds}) of the entire Voting
5 Interests. Amendments correcting errors, omissions, scrivener’s errors, violations of applicable
6 law, conflicts between the Condominium Documents, or if determined necessary and desirable by
7 the Board to comply with the requirements of the secondary mortgage market, may be executed
8 by the Officers of the Association, upon Board approval, without need for Association membership
9 vote. The Board may also adopt amendments necessary to comply with the requirements of any
10 governmental entity.

11 **18.5 Effective Date.** An amendment when adopted shall become effective after being
12 recorded in the Public Records of Lee County, Florida, according to law.

13 **18.6 Automatic Amendment.** Whenever the Act, Chapter 617, Florida Statutes, or
14 other applicable statutes or administrative regulations, as amended from time to time, are amended
15 to impose procedural requirements less stringent than set forth in this Declaration, the Board may
16 operate the Association pursuant to the less stringent requirements without the need to change this
17 Declaration. The Board, without a vote of the Owners, may also adopt by majority vote,
18 amendments to this Declaration as the Board deems necessary to comply with such operational
19 changes as may be enacted by future amendments to Chapters 607, 617, and the Act, or such other
20 statutes or administrative regulations as required for the operation of the Association, all as
21 amended from time to time.

22 **18.7 Proviso.** No amendment shall change the configuration of any Unit or the share in
23 the Common Elements appurtenant to it, or increase the Owner’s proportionate share of the
24 Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the
25 mortgages on such Unit shall join in the execution of the amendment, and all other Unit Owners
26 approve the amendment.

27 **19. TERMINATION.** The Condominium may be terminated under any one (1) of the
28 following alternatives:

29 **19.1 Termination Because of Economic Waste or Impossibility.** Notwithstanding
30 anything to the contrary in this Declaration, the condominium form of ownership may be
31 terminated (or partially terminated) by a plan of termination approved by at least seventy-five
32 percent (75%) of the entire Voting Interests when:

- 33 • the total estimated cost of repairs necessary to restore the improvements to
34 their former condition or bring them into compliance with applicable laws
35 or regulations exceeds the combined fair market value of all Units in the
36 Condominium after completion of the repair; or

- it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

19.2 Optional Termination. Except as provided in Article 19.1, the condominium form of ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the entire Voting Interests of the Condominium if not more than five percent (5%) of the entire Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3) of the Act.

19.3 Very Substantial Damage. If the Condominium suffers major damage as defined in Article 13, which means that more than one-half the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board, the Condominium may be terminated if at least seventy-five percent (75%) of the entire Voting Interests in the Condominium vote to approve a plan of termination.

19.4 Mortgage Lienholders. Notwithstanding any provision to the contrary in this Declaration or the Act, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Condominium Parcel is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the Condominium Parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Section 718.117(16) of the Act.

19.5 Procedures for Termination and Sale. The termination of the Condominium via any of the methods set forth herein shall be as set forth in Section 718.117(4) – (20) of the Act.

19.6 Amendment. This Article 19 may be amended in the same manner in which this Declaration may be amended generally, as set forth in Article 18.

20. CONDEMNATION.

20.1 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.

20.2 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.

1 **20.3 Distribution of Funds.** If the Condominium is terminated after condemnation, the
2 proceeds of all awards and Special Assessments will be owned and distributed in the manner
3 provided for insurance proceeds when the Condominium is terminated after a Casualty. If the
4 Condominium is not terminated after condemnation, the size of the Condominium may be reduced.
5 The Owners of condemned Units, if any, will share in awards and Special Assessments as provided
6 below.

7 **20.4 Association as Agent.** The Association is hereby irrevocably appointed as each
8 Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning
9 authority for the purpose of realizing just compensation for the taking.

10 **20.5 Units Reduced but Habitable.** If the taking reduces the size of a Unit and the
11 remaining portion of the Unit can be made habitable, the awards for the taking of a portion of that
12 Unit shall be used for the following purposes in the order stated, and the following changes shall
13 be effected in the Condominium.

14 **20.5.1 Restoration of Unit.** The Unit shall be made habitable. If the cost of the
15 restoration exceeds the amount of the award, the additional funds required shall be assessed against
16 the Owner of the Unit.

17 **20.5.2 Distribution of Surplus.** The balance of the award, if any, shall be
18 distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made
19 payable jointly to the Owner and mortgagee(s).

20 **20.5.3 Adjustment of Shares in Common Elements.** If the floor area of a Unit is
21 reduced by the taking, the number representing the share in the Common Elements appurtenant to
22 the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the
23 taking, and then the shares of all Unit Owners in the Common Elements shall be restated as
24 percentages of the total of the numbers representing their original shares as reduced by the taking.

25 **20.6 Units Not Habitable.** If the taking of any entire Unit or so reduces the size of the
26 Unit that it cannot be made habitable, the award for the taking of the Unit shall be used for the
27 following purposes in the order stated, and the following changes shall be effected in the
28 Condominium:

29 **20.6.1 Payment of Award.** The condemnation award immediately prior to the
30 taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance
31 being made payable jointly to the Owner and mortgagee(s).

32 **20.6.2 Addition to Common Elements.** If possible and practical, the remaining
33 portion of the Unit shall become a part of the Common Elements and shall be placed in condition
34 for use by all Unit Owners in the manner approved by the Board.

1 **20.6.3 Assessments.** If the amount of the award for the taking is not sufficient to
2 pay the fair market value of the condemned Unit to the Unit Owner and to recondition the
3 remaining portion of the Unit, the amount required for those purposes shall be raised by Special
4 Assessment against all of the Unit Owners who will continue as Owners of any Unit after the
5 changes in the Condominium effected by the taking. The Assessments shall be made in proportion
6 to the shares of those Owners in the Common Expenses after the changes effected by the taking.

7 **20.7 Taking of Common Elements.** Awards for the taking of Common Elements shall
8 be used to make the remaining portion of the Common Elements usable in the manner approved
9 by the Board. The balance of such awards, if any, may be returned to the Unit Owners or used by
10 the Association as the Board may determine.

11 **20.8 Amendment of Declaration.** The changes in Units, in the Common Elements and
12 in the ownership of the Common Elements that are necessitated by condemnation, shall be
13 evidenced by an amendment of the Declaration of Condominium that need be approved only by a
14 majority of all Directors of the Board.

15 **21. EMERGENCY POWERS.**

16 **21.1 Additional Board Authority.** In addition to other authority granted by law and the
17 Condominium Documents, the Board has the following power and authority in connection with
18 emergency conditions:

19 **21.1.1** To determine after a Casualty whether the Condominium Property or
20 portions thereof can be safely used or occupied, which decision shall not be conclusive as to the
21 determination of habitability. Such decision shall be based upon the advice of emergency
22 management officials or a licensed professional.

23 **21.1.2** To declare any portion of the Condominium Property or Association
24 Property unavailable for use, occupancy, or presence upon by Unit Owners, Family members,
25 Tenants, Guests, or Invitees (and to distinguish between such groups) after a Casualty, including
26 during the rebuilding process. Such decision by the Board is based upon the advice of emergency
27 management officials, governmental authority or a licensed professional and can be made only if
28 necessary, to protect against liability to or the health, safety, or welfare of the Association, Unit
29 Owners, Family members, Tenants, Guests, or Invitees.

30 **21.1.3** To mitigate damage including taking action to prevent the spread of fungus
31 (including, but not limited to, mold and mildew) including tearing out drywall and carpet (even if
32 the Unit Owner is obligated to insure and/or replace those items) and removing personal property
33 from the Unit and disposing of damaged property or storing such property on-site or at an offsite
34 location, with Unit Owners responsible for reimbursing the Association for items for which the
35 Unit Owner is responsible but which may be necessary to prevent further damage. The Association
36 bears no liability for such actions, if taken in good faith.

1 **21.1.4** To contract on behalf of Unit Owners, with said Unit Owners responsible
2 to reimburse the Association for items for which the Unit Owner is responsible, but which may be
3 necessary to mitigate or prevent further damage. Without limitation, this includes debris removal,
4 dry-out of Units and replacement of damaged air conditioners when necessary to provide climate
5 control in the Units. The Unit Owner is responsible to reimburse the Association within ten (10)
6 days of the Association's invoice. The Association's right to payment shall be secured by a
7 Common Expense Lien as provided in the Act and actions to collect such sums shall entitle the
8 Association to recover interest, late fees, attorneys' fees, and other costs and expenses of
9 collection.

10 **21.1.5** To implement disaster protocols prior to, during, or after an impending
11 disaster or state of emergency including, but not limited to, shutting down elevators, electricity,
12 security systems, and air conditioners.

13 **21.1.6** To adopt, by Board action, emergency assessments with such notice deemed
14 practicable by the Board.

15 **21.1.7** To adopt emergency Rules and Regulations governing the use and
16 occupancy of the Units, Common Elements, Limited Common Elements, and Association
17 property, with notice given only to those Directors with whom it is practicable to communicate.

18 **21.1.8** To enter into agreements with local counties and municipalities to assist
19 counties and municipalities with debris removal.

20 **21.1.9** To exercise all emergency powers set forth in the Act.

21 **21.2** In addition to all applicable emergency powers conferred by law and these
22 Condominium Documents, the Board shall have all of the powers in the preceding sections of this
23 paragraph, plus the following powers if a state of emergency has been declared by any
24 governmental entity or official with authority applicable to the locale in which the Condominium
25 is located regarding any infectious disease outbreak, pandemic, biological or chemical
26 contamination, including sewage, or similar public health risks:

27 **21.2.1** To close the Condominium Property to Guests and Invitees, including non-
28 resident family members, guests and contractors, excepting such essential contractors as the Board
29 may determine appropriate.

30 **21.2.2** To close all non-essential facilities on the Condominium Property,
31 including recreational and social facilities.

32 **21.2.3** To restrict or ban entry onto the Condominium by Guests and Invitees if
33 deemed necessary by the Board.

1 **21.2.4** To enact and implement restrictions, protocols and procedures the Board
2 may deem appropriate, including, but not limited to, requiring the use of gloves, masks and other
3 protective equipment, quarantines, restrictions or moratoriums on move ins/move outs, restrictions
4 or moratoriums on occupancy by Unit Owners, Tenants or Guests if such occupancy presents a
5 health risk, as determined by the Board. The Board may enact or continue requirements regarding
6 use of masks and other personal protective equipment, social distancing, limits on facility use or
7 facility closure, even where a previously declared state of emergency has expired, where the Board
8 finds such requirements to be in the best interests of the Association and the Residents of the
9 Condominium. To enact any other rules and regulations as approved by a majority of the Board as
10 the Board determines is in the best interests of the health, safety and welfare of Association, the
11 Unit Owners, and Residents, with as much notice as practical.

12 **21.2.6** To have all of the emergency powers as provided for in the Bylaws and
13 Articles of Incorporation.

14 **21.3** For purposes of this Article 21, an emergency shall be deemed to exist in the
15 following circumstances:

16 **21.3.1** When the locale in which the Condominium is under a tropical storm or
17 hurricane watch or warning.

18 **21.3.2** When the locale in which the Condominium is located is under a declared
19 state of emergency from any governmental agency having jurisdiction related to health, safety, and
20 welfare.

21 **21.3.3** When the Condominium Property is in danger of significant damage or has
22 been significantly damaged, as determined by the Board, by Casualty, act of nature, or act of man,
23 including but not limited to fires, floods, hurricanes, tropical storms or other severe weather events,
24 floods, erosion, sinkholes, pandemics or other public health threats, or acts of war, terrorism or
25 criminal conduct.

26 **21.3.4** The powers conferred by this Article 21 shall be in force during such time
27 as an emergency exists, as well as an anticipation of an emergency or in response to an emergency
28 which has resulted in damage to the Condominium Property, or which continues to present a threat
29 to health, safety and welfare or legal liabilities to the Association.

30 **22. COMPLIANCE AND DEFAULT.**

31 **22.1 Duty to Comply; Right to Sue.** Each Unit Owner, his or her Family, Tenants,
32 Guests, Invitees and all Unit Occupants and the Association is governed by and shall comply with
33 the provisions of the Condominium Act and the Condominium Documents. Actions for damages
34 or for injunctive relief, or both, or for failure to comply may be brought by the Association or by
35 a Unit Owner against:

1 **22.1.1** The Association. The Association may, but shall not be required to, seek
2 enforcement of the Condominium Documents. Without limiting the intended generality of the
3 foregoing sentence, the Board has the discretion, without further liability to the Association, to
4 decline to take action in cases as to which legal counsel has advised of a reasonable probability of
5 failure on the merits, or in situations which involve disputes, complaints, or allegations of violation
6 of the Condominium Documents involving the interest of the Owners of two (2) or more different
7 Units, including, but not limited to, noise complaints, nuisance allegations, and the like;

8 **22.1.2** A Unit Owner; or

9 **22.1.3** Anyone who occupies a Unit as a Unit Owner, Family member, Tenant,
10 Occupant or Guest. Unit Owners shall be jointly and severally liable for violations of the
11 Condominium Documents and damage to the Condominium Property by their Family members,
12 Tenants, Guests, Invitees and Unit Occupants.

13 **22.2 Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of a Unit
14 Owner, Family member, Tenant, Guest, Invitee, Occupant or the Association to comply with the
15 requirements of the Condominium Act or the Condominium Documents, as amended from time to
16 time, the prevailing party is permitted to recover the costs and expenses of the proceeding and a
17 reasonable attorneys' fee before trial, at trial and on appeal.

18 **22.3 No Election of Remedies; Remedies Cumulative.** All rights, remedies and
19 privileges granted to the Association or Unit Owners under any terms, provisions, covenants, or
20 conditions of the Condominium Documents shall be deemed to be cumulative, and the exercise of
21 any one (1) or more shall not be deemed to constitute an election of remedies, nor shall it preclude
22 the party from exercising such other additional rights, remedies, or privileges as may be granted
23 by the Condominium Documents, or at law or in equity. It shall not be presumed that money
24 damages shall be an adequate remedy for violations of the Condominium Documents.

25 **22.4 Waiver of Application of Condominium Documents.** The Association has the
26 right to waive the application of one (1) or more of the covenants or restrictions of the
27 Condominium Documents, or to permit a deviation from said covenants or restrictions, as to any
28 Unit where, in the discretion of the Board, hardship circumstances exist which justify such waiver
29 or deviation. In the event of any such waiver or permitted deviation, or in the event the Association
30 fails to enforce violation of said covenants or restrictions, such actions or inactions shall not be
31 deemed to prohibit nor restrict the right of the Association, or any other Person having the right to
32 enforce said covenants or restrictions, from insisting upon strict compliance with respect to all
33 other Units, nor shall any such actions be deemed a waiver of any of the covenants or restrictions
34 contained in the Condominium Documents as same may be applied in the future.

35 **22.5 Notice of Lien or Suit.**

36 **22.5.1 Notice of Lien.** A Unit Owner shall give written notice to the Association
37 of every lien upon his or her Unit, other than for permitted first mortgages, taxes and Special

1 Assessments, within five (5) days after the Unit Owner receives actual notice of the attachment
2 thereof.

3 **22.5.2 Notice of Suit.** A Unit Owner shall give written notice to the Association
4 of every suit or other proceeding which may affect the title to his or her Unit, or impose liability
5 on the Association, within five (5) days after the Unit Owner receives actual knowledge thereof.

6 **22.5.3 Failure to Comply.** Failure of an Owner to comply with this Article will
7 not affect the validity of any judicial suit; however, the failure may render the Owner liable to any
8 party injured by such failure.

9 **23. MISCELLANEOUS PROVISIONS.**

10 **23.1 Covenants Running with the Land.** The covenants and restrictions as herein
11 contained, or forming a part of the Condominium Documents, shall be deemed to run with the land
12 and shall run perpetually unless terminated or amended as provided herein.

13 **23.2 Savings Clause.** If any provision of the Condominium Documents hereto, as the
14 same now exist or as may be later amended or any portion thereof, shall be held invalid by any
15 Court, or other governmental agency with proper authority to so hold, the validity of the remainder
16 of said Condominium Documents shall remain in full force and effect.

17 **23.3 Heirs, Successors and Assigns.** These Condominium Documents shall be binding
18 upon the heirs, nominees, successors in interest or title, administrators, executors and assigns of
19 all Unit Owners. The Association shall have the right, but not the obligation to disclose any
20 unresolved violation of the Condominium Documents to any proposed successor, assign, lienor,
21 or other third party and shall bear no liability in connection with such disclosures. It shall be the
22 duty of the Unit Owner intending to transfer or hypothecate title to the Unit, or transfer or pledge
23 any legal interest in the Unit to such parties.

24 **23.4 Notices.** All notices shall be given as provided in the Bylaws.

25 **23.5 Compliance with Fair Housing Laws.** There shall be no limitation upon sale,
26 lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin,
27 handicap, or familial status. The Association may make reasonable accommodations, including
28 reasonable waiver of the covenants and restrictions of the Condominium Documents, when
29 necessary to afford handicapped individuals the opportunity to enjoy the Condominium premises,
30 or to comply with other legal requirements.

31 **23.6 Conflicts.** In the event of a conflict between any provision of the Condominium
32 Documents and the Condominium Act, the Condominium Act shall control, except in cases where
33 the Act permits the Condominium Documents to regulate the subject, in which case the
34 Condominium Documents will control. In the event of a conflict between this Declaration and the
35 other Condominium Documents, same shall be governed as provided in the Bylaws.

1 **23.7 Interpretation.** The Board is responsible for interpreting the provisions of the
2 Condominium Documents. The Board’s interpretations shall be binding upon all parties unless
3 wholly unreasonable. A written opinion rendered by Association’s legal counsel that an
4 interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the
5 interpretation as valid.

6 **23.8 Captions and Headings.** The headings and captions used in the Condominium
7 Documents are solely for convenience sake and shall not be considered a limitation of any nature
8 in interpreting the Condominium Documents.

9 **23.9 Waiver.** The failure of the Association to enforce any right, provision, covenant or
10 condition which may be granted by the Condominium Documents shall not constitute a waiver of
11 the right of the Association to enforce such right, provision, covenant or condition in the future.

12 **23.10 Plurality; Gender.** Wherever the context so permits, the singular includes the
13 plural, the plural includes the singular, and the use of any gender includes all or no genders.

14 **23.11 Ratification.** Should any act of the Association be subject to any legal or other
15 challenge or controversy as to whether the act was properly approved or handled, the Board of
16 Directors shall have the authority, but not the obligation, to submit that act to a ratification vote by
17 such body and subject to such voting requirements as the Board considers appropriate. Any
18 ratification or attempted ratification shall not be considered an admission by the Association that
19 the complained of act was not properly approved in the first instance. Any act of ratification shall
20 be deemed to relate back to the original act for all purposes.

21