

CERTIFICATE OF AMENDMENT  
OF  
ENCLAVE, A CONDOMINIUM

NOTICE IS HEREBY GIVEN that at a duly called meeting of the members of the Enclave of Naples Condominium Association, Inc., on May 19, 2022, held at the Enclave Social Room, 4601 Gulf Shore Blvd., N., Naples, FL 34109 at 4:00 P.m., by a vote of not less than two thirds (2/3rds) of the unit owners present in person or by proxy and voting, the Declaration of Condominium of Enclave, a Condominium, Articles of Incorporation and Bylaws of Enclave of Naples Condominium Association, Inc., as originally recorded in the Public Records of Collier County, Florida at O.R. Book 1601, Page 326, et. seq., as may have been previously amended, were amended and restated as follows:

1. The Declaration of Condominium of Enclave, a Condominium, Articles of Incorporation and Bylaws of Enclave of Naples Condominium Association, Inc., are amended in accordance with the Exhibit A attached hereto and incorporated herein.

IN WITNESS WHEREOF, Enclave of Naples Condominium Association, Inc. has caused this Certificate of Amendment to be executed in accordance with the authority hereinabove expressed this 25<sup>th</sup> day of May, 2022.

ENCLAVE OF NAPLES CONDOMINIUM  
ASSOCIATION, INC.  
a Florida not-for-profit corporation

(corporate seal)

By: [Signature]  
Its President

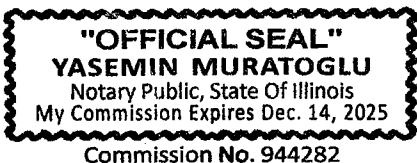
[Signature]  
Witness #1: R. Rofsky  
(print name)

[Signature]  
Secretary Attest

[Signature]  
Witness #2: VINCENT McCAFFREY  
(print name)

COUNTY OF Lake  
STATE OF Illinois

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of May, 2022 by means of  physical presence or  online notarization, by Harrison Bernbaum President of Enclave of Naples Condominium Association, Inc., who is personally known to me or who has produced driver's licence (type of identification) as identification and who did not take an oath.



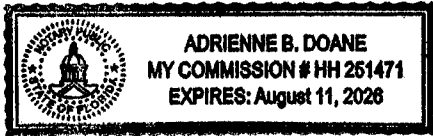
[Signature]  
Notary Public Yasemin Muratoglu

STATE OF Florida  
COUNTY OF Collier

The foregoing instrument was acknowledged before me on this 26<sup>th</sup> day of May, 2022 by means of  physical presence or  online notarization, by Charlene Banette Secretary of Enclave of Naples Condominium Association, Inc. who is personally known to me or who provided \_\_\_\_\_ (type of identification) as identification.

(SEAL)

Adrienne B. Doane  
Notary Public  
Print name Adrienne B. Doane  
My commission expires: 8/11/26



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INDEX TO  
THIRD AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM OF ENCLAVE, A CONDOMINIUM

NOTICE OF THIRD AMENDED AND RESTATED DECLARATION

1.	SUBMISSION TO CONDOMINIUM OWNERSHIP .....	Page 1
2.	NAME AND ADDRESS .....	1
3.	DESCRIPTION OF CONDOMINIUM PROPERTY .....	1
4.	SURVEY AND PLANS .....	1
5.	DESCRIPTION OF IMPROVEMENTS.....	1
6.	DEFINITIONS .....	2
6.1	Assessment .....	2
6.2	Association or Condominium Association.....	2
6.3	Association Property.....	2
6.4	Board or Board of Directors .....	2
6.5	Common Elements .....	2
6.6	Condominium.....	2
6.7	Condominium Act .....	2
6.8	Condominium Documents.....	3
6.9	Condominium Parcel.....	3
6.10	Condominium Property.....	3
6.11	County.....	3
6.12	Developer.....	3
6.13	Division.....	3
6.14	Family or Single Family.....	3
6.15	Fixtures.....	3
6.16	Guest.....	3
6.17	Institutional Mortgagee .....	3
6.18	Insurance Trustee.....	3
6.19	Limited Common Elements .....	4
6.20	Occupy .....	4
6.21	Primary Institutional Mortgagee.....	4
6.22	Primary Occupant.....	4
6.23	Rules and Regulations.....	4
6.24	Voting Certificate .....	4
6.25	Voting Interest.....	4
7.	DEFINITION OF UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS .....	4

	Page No.
7.1 Units .....	4
7.2 Common Elements.....	5
7.3 Limited Common Elements.....	5
8. CONDOMINIUM PARCELS: APPURTENANCES AND USE: .....	6
8.1 Shares of Ownership .....	6
8.2 Appurtenances to Each Unit.....	6
8.3 Use and Possession.....	7
9. EASEMENTS.....	7
10. RESTRAINT UPON SEPARATION AND PARTITION .....	8
11. INSURANCE PROVISIONS .....	9
11.1 Unit Owners.....	9
11.2 Association.....	9
11.2.1 Required Coverage.....	9
11.2.2 Optional Coverage.....	10
11.2.3 Deductibles.....	10
11.2.4 Appraisal for Insurance Purposes.....	10
11.2.5 Form of Policy and Insurance Trustee .....	10
11.2.6 Required Policy Provisions.....	10
11.2.7 Restrictions of Mortgagees .....	11
11.2.8 Insurance Proceeds.....	11
11.2.9 Distribution of Insurance Proceeds and Losses.....	11
12. ASSOCIATION .....	12
12.1 Governance and Operation .....	12
12.2 Conflict of Governance Documentation .....	12
12.3 Delegation of Management .....	12
12.4 Membership.....	12
12.5 Acts of the Association.....	12
12.6 Powers and Duties.....	12
12.7 Purchase of Units.....	13
12.8 Acquisition of Property.....	13
12.9 Disposition of Property .....	13
12.10 Roster .....	13
12.11 Limitation on Liability .....	13
12.12 Official Records.....	14
12.13 Voting Interests.....	14
13. ASSESSMENTS AND LIENS .....	14
13.1 Priority of Lien.....	15
13.2 Certificate as to Assessments.....	15
13.3 Common Expenses.....	15
13.4 Share of Common Expenses .....	15

	Page No.
13.5	Ownership Assessments..... 15
13.6	Who is Liable for Assessments..... 15
13.7	No Waiver or Excuse from Payment..... 16
13.8	Application of Payments; Failure to Pay; Interest..... 16
13.9	Acceleration ..... 16
13.10	Foreclosure of Lien ..... 16
13.11	Lien for Charges..... 16
14.	BOARD'S RULE MAKING POWER..... 16
15.	MAINTENANCE LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS..... 16
15.1	Association Maintenance ..... 17
15.2	Unit Owner Maintenance ..... 18
15.3	Other Unit Owner Responsibilities..... 20
15.4	Alteration of Units or Common Elements by Unit Owners ..... 21
15.5	Major Construction..... 21
15.6	Alterations and Additions to Common Elements and Association Property ..... 22
15.7	Enforcement of Maintenance ..... 22
15.8	Negligence: Damage Caused by Condition in Unit ..... 22
15.9	Association's Access to Units..... 23
15.10	Storm Shutters, Including Hurricane Shutters..... 23
15.11	Combination of Units..... 23
16.	USE RESTRICTIONS.. ..... 23
16.1	Occupancy of Units; Single Family Residence..... 23
16.2	Nuisances..... 23
16.3	Signs..... 24
16.4	Use of Unit Exteriors and Common Elements..... 24
16.5	Antennae: Aerials: Radio Transmissions ..... 24
16.6	Vehicles..... 24
16.7	Pets..... 24
16.8	Window Décor ..... 23
16.9	Absence of Owner..... 24
16.10	Park Shore Covenants..... 24
16.11	Guest Suites..... 25
16.12	Guest Occupancy..... 25
	16.12.1 Non-Overnight Visitation by Guests When Unit Owner is in Residence..... 25
	16.12.2 Overnight Guests When Unit Owner is in Residence..... 25
	16.12.3 Non-Overnight Guest in the Absence of the Unit Owner..... 25
	16.12.4 Additional Board Authority..... 26
17.	LEASING OF UNITS..... 26

18.	TRANSFER OF OWNERSHIP OF UNITS .....	26
18.1	Forms of Ownership .....	26
18.2	Transfers Subject to Approval.....	27
18.3	Procedures.....	28
19.	RECONSTRUCTION OR REPAIR AFTER CASUALTY.....	30
19.1	Damage to Units.....	30
19.2	Damage to Common Elements – Less than “Very Substantial”.....	31
19.3	“Very Substantial” Damage.....	31
19.4	Application of Insurance Proceeds .....	32
19.5	Equitable Relief.....	32
19.6	Plans and Specifications.....	32
19.7	Association as Agent; Insurance Trustee.....	32
20.	CONDEMNATION: .....	33
20.1	Deposit of Awards with Association .....	33
20.2	Determination Whether to Continue Condominium.....	33
20.3	Disbursement of Funds .....	33
20.4	Association as Agent.....	33
20.5	Assessments .....	33
20.6	Arbitration.....	33
20.7	Taking of Common Elements.....	34
20.8	Amendment of Declaration.....	34
21.	TERMINATION OF CONDOMINIUM.....	34
22.	ENFORCEMENT .....	35
22.1	Duty to Comply: Right to Sue.....	35
22.2	Waiver of Rights.....	35
22.3	Attorneys’ Fees .....	35
22.4	No Election of Remedies.....	35
22.5	Creation and Enforcement of Charges.....	35
23.	RIGHTS OF MORTGAGEES .....	35
23.1	Approvals.....	35
23.2	Notice of Casualty or Condemnation .....	36
23.3	Lender’s Notices.....	36
24.	AMENDMENT OF DECLARATION.....	36
24.1	Proposal.....	36
24.2	Procedure.....	36
24.3	Vote Required .....	36
24.4	Certificate Recording .....	36

	Page No.
24.5 Proviso.....	36
24.6 Automatic Amendment.....	37
25. MISCELLANEOUS .....	37
25.1 Severability .....	37
25.2 Interpretation.....	37
25.3 Access Commons "D" and Commons "V" .....	37

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**THIRD AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
OF ENCLAVE, A CONDOMINIUM**

The original Declaration of Condominium of Enclave, a Condominium, was recorded in Official Record Book 1601 at Page 326 *et seq.*, of the Public Records of Collier County, Florida. That Declaration of Condominium, as previously amended, is hereby further amended in part and is restated in its entirety as set forth below.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Third Amended and Restated Declaration of Condominium is made by Enclave of Naples Condominium Association, Inc., a Florida corporation not-for-profit hereafter the "Association." The land subject to this Declaration and the improvements located thereon were previously submitted to condominium ownership in accordance with the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Condominium parcels.
2. **NAME AND ADDRESS:** The name of this Condominium is Enclave of Naples Condominium Association, Inc., and its address is 4601 Gulf Shore Blvd., N., Naples, FL 34103.
3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration, hereinafter the "Land," is legally described as Lot 24, Block 12, Park Shore Unit No. 5, according to the plat thereof, at Plat Book 12, Pages 39 and 40, of the Public Records of Collier County, Florida.
4. **SURVEY AND PLANS:** The survey of Land and plot plans and unit descriptions are attached to the original recorded Declaration of Condominium as recorded at Official Record Book 1601, Page 326, *et. seq.* of the Public Records of Collier County, Florida, and are incorporated herein by reference.
5. **DESCRIPTION OF IMPROVEMENTS.**
  - A. **Residential Building.** The improvements include one residential building containing twenty-eight (28) units as further detailed in Exhibit "B" to the original recorded Declaration of Condominium.
  - B. **Amenity Building.** This building includes two (2) guest suites, a fitness area and a recreational room, as well as garages and a mechanical building.

Also included are a pool, tennis court, parking areas, walks, landscaping and underground structures and improvements which are not part of the unit or located within the buildings,



such as wires, cable, drains, pipes, ducts, conduits, valves and fittings.

6. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated in the Florida Condominium Act currently Florida Statute 718. In addition, the following definitions shall apply:

6.1 "**Assessment**" shall be defined as a share of the funds required for the payment of common expenses which, from time to time, is assessed against the units.

6.2 "**Association**" or "**Condominium Association**" shall be defined as Enclave of Naples Condominium Association, Inc., a Florida not-for-profit corporation, which is the entity responsible for the operation of this Condominium.

6.3 "**Association Property**" shall be defined as all property, real or personal, owned by the Association for the use and benefit of unit owners.

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

6.5 "**Common Elements**" shall be defined as all of the property submitted to condominium ownership that is not within the unit boundaries set forth herein, and shall include without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements outside the units, including all limited common elements.
- (C) Easements through each unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.

6.6 "**Condominium**" shall mean that form of ownership of real property created pursuant to the Condominium Act, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

6.7 "**Condominium Act**" shall be defined as Florida Statute Chapter 718, or any successor statute.

6.8 "**Condominium Documents**" shall be defined as and include this Declaration of Condominium, the Articles of Incorporation, Bylaws, Rules and Regulations and all recorded exhibits hereto or referred to herein, as amended from time to time.

6.9 "**Condominium Parcel**" means a unit, together with the undivided share in the common elements appurtenant to the unit.

6.10 "**Condominium Property**" means the lands and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

6.11 "**County**" shall be defined as Collier County, Florida.

6.12 "**Developer**" shall be defined as ENCLAVE OF NAPLES, LTD., a Florida limited partnership.

6.13 "**Division**" means the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation.

6.14 "**Family**" or "**Single Family**" shall be defined to include:

(A) One natural person, his spouse, if any, and their custodial children, if any.

(B) Not more than two natural persons not meeting the requirements of 6.14(A) above, but who customarily reside together as a single housekeeping unit, and the custodial children of such parties, if any.

The reference to "natural" herein is intended to distinguish between an individual and a corporation or other artificial entity. "Family Member" is a person who resides in a unit as part of the owner's family but is not a title holder.

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

6.16 "**Guest**" shall be defined as any person who is not the unit owner or a member of the owner's family, who is physically present in, or occupies, the unit on a temporary basis at the invitation of the owner or other permitted occupant, for a period of not less than thirty (30) days during any calendar year, without the payment of monetary or other consideration.

6.17 "**Institutional Mortgagee**" shall be defined as the mortgagee of a mortgage against a Condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit-sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. It shall further refer to any holder of a mortgage against a Condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans

Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and/or assigns.

6.18 "**Insurance Trustee**" shall be defined as the individual or entity designated to receive, hold and/or expend insurance proceeds on behalf of the beneficiaries.

6.19 "**Limited Common Elements**" shall be defined as those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units.

6.20 "**Occupy**" when used in connection with a unit, shall be defined as the act of staying overnight in a unit.

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

6.22 "**Primary Occupant**" shall be defined as the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not legally married, or by a trustee or a corporation or other entity which is not a natural person.

6.23 "**Rules and Regulations**" shall be defined as those rules and regulations promulgated by the Board of Directors, governing the use of the common elements, limited common elements, the operation of the Association, and usage of units.

6.24 "**Voting Certificate**" shall mean "voting certificate" as defined by the Condominium Act and is the document which designates one (1) of the record owners, or the corporate, partnership or entity representative who is authorized to cast the vote on behalf of a unit owned by more than one (1) owner or by any entity.

6.25 "**Voting Interest**" shall be defined as the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in the Association matters. There are twenty-eight (28) units; therefore, the total number of voting interests is twenty-eight (28) votes.

**7. DEFINITION OF UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS:** The Condominium consists of "Units", "Common Elements" and "Limited Common Elements," as those terms are herein defined.

7.1 **Units.** The term "Units" as used herein shall mean and comprise the twenty-eight (28) separate dwelling units in the Condominium which are located and individually described in composite Exhibits to the original recorded Declaration of Condominium, incorporated herein by reference, excluding, however, all pipes, wires, conduits or other utility lines running through each unit which are utilized for or serve more than one (1) unit, the same being the Common Elements as hereinafter provided. Each unit shall include that part of the building containing the unit that lies within the boundaries of the unit, which boundaries are as follows:

(a) Upper and Lower boundaries. The upper and lower boundaries of the unit shall be the following boundaries, extended to an intersection with the perimetrical boundaries:

- (1) Upper Boundary: the horizontal plane of the undecorated finished ceiling.
- (2) Lower Boundary: the horizontal plane of the undecorated finished floor.

(b) Perimetrical Boundaries. The perimetrical boundaries of the unit shall be the vertical planes of the undecorated unfinished interior of the walls bounding the unit extended to intersect with each other and with the upper and lower boundaries.

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

7.2 Common Elements. The term "Common Elements," as used herein, shall mean and comprise all of the real property of the Condominium except units, including, without limitation, (1) easements through units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to more than one (1) unit and common elements, (2) easements of support in every portion of a unit which contributes to the support of other units and/or Common Elements; and (3) installations for the furnishing of utility services to more than one unit or to the Common Elements or to a unit other than the unit containing the installation; and (4) the property and installations in connection therewith required for the furnishing of service to more than one unit or the common elements, and (5) fixtures owned or held for the common use, benefit and enjoyment of all unit owners in the Condominium and (6) the dwelling shown in Exhibit B to the original recorded Declaration of Condominium as guest suite A and guest suite B, management office, social room with kitchen, exercise room, men's and women's restrooms and mail room.

7.3 Limited Common Elements.

A. General Description of Limited Common Elements. The term "Limited Common Elements" as the term is used herein, shall mean and comprise the Common Elements which are reserved herein, or assigned or granted separately here from, for the use of a certain unit or units to the exclusion of other units. Certain of the parking spaces identified on Exhibit "B" to the original recorded Declaration of Condominium are designated as Limited Common Elements and are appurtenant to the unit to which they were assigned by the developer. The balcony or balconies and the elevator lobby of each unit are designated as Limited Common Elements appurtenant to such unit. Unit owners shall decorate and maintain at their expense the elevator lobby appurtenant to their unit, however the Association must in writing approve the decorating of said lobby. No structural changes or modifications shall be made to the lobby and/or elevator doors without prior Board review and approval.

- B. **Roof Deck.** The area identified as “roof deck” on Exhibit B-5 attached to the original recorded Declaration of Condominium is a Limited Common Element appurtenant to Unit PH-4. This roof deck, though a Limited Common Element, shall be cleaned, maintained and repaired and replaced by the owner of Unit PH-4.
- C. **Garages.** There are shown on Exhibit “A” twenty-six (26) two-car garages and two (2) three car garages with storage area, as limited common elements, numbered G-1 through G-28. A garage was initially assigned by the developer, by recorded instrument, to the exclusive use of each unit. Each unit shall always have the exclusive use of one assigned garage. Except as otherwise provided in Article 15, the cost of maintenance of all garages shall be a common expense. Unit owners may exchange such exclusive use rights to particular garages provided each unit must have at least one (1) assigned garage at all times.
- D. **Air Conditioning and Heating Equipment.** All equipment, fixtures and installations located outside of a unit which furnish air conditioning or heating exclusively to that unit shall be Limited Common Elements and shall be maintained, repaired and replaced by and solely at the expense of the unit owner of the unit, except as otherwise provided in Article 15. The Association is responsible for maintenance, repair and replacement of the cooling tower.
- E. **Balconies.** Any balcony attached to and serving exclusively a unit shall be a Limited Common Element. The unit owner shall be responsible for the day-to-day cleaning and care of the balcony unless otherwise provided for herein, but all painting and maintenance of the exterior surfaces and structures of the building shall be the responsibility of the Association and shall be a common expense. No balcony may be carpeted. No other covering or enclosure shall be done without the prior written approval of the Board of Directors. The maintenance, repair and replacement and insurance of such approved covering or enclosure shall be the responsibility of the unit owner. In the event the Association effects any repairs and/or maintenance to the balconies, including, but not limited to, waterproofing or repair and/or maintenance to the Common Elements, the unit owner shall bear the cost of removal of any floor covering installed by the current unit owner or any prior unit owner, in order to enable the Association to conduct the work, and the unit owner shall bear the cost of replacement of the floor covering, as well as the application of any waterproofing. In the event the unit owner does not promptly, after notice, effect the removal of the floor covering, the Association may make arrangements for the removal and assess the unit owner the cost thereof. The Owner of Unit 1 shall be responsible for the deck coverings.

## 8. **CONDOMINIUM PARCELS: APPURTENANCES AND USE:**

8.1 **Shares of Ownership.** The Condominium contains twenty-eight (28) units, the Common Elements, Limited Common Elements and the common surplus.

8.2 **Appurtenances to Each Unit.** The owner of each unit shall have certain rights and own an undivided one/twenty-eighth (1/28th) share in the Condominium property, including without limitation the following:

- (A) An undivided ownership share in the land and other common elements and the common surplus.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Third Amended and Restated Articles of Incorporation and the Third Amended and Restated Bylaws of the Association.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.
- (D) Such other appurtenances as may be provided in the Condominium Documents. Each unit and its appurtenances constitutes a "condominium parcel."

8.3 **Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the Unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the Condominium property. No unit may be subdivided. The use of the Units, Common Elements and Limited Common Elements shall be governed by the Condominium Documents and by the rules and regulations adopted by the Board of Directors, as provided in the Third Amended and Restated Bylaws.

9. **EASEMENTS:**

Each of the following easements and easement rights is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked. None of these easements may be encumbered by any lien other than those on the Condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

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

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

(C) **Perpetual Nonexclusive Easement to Public Ways.** The walks and other rights-of-way shall be subject to a perpetual nonexclusive easement for ingress and egress and access to, over and across the same.

(D) **Easements and Cross-Easements.** The common elements of the Condominium shall be subject to perpetual nonexclusive easements in favor of the Association, and such appropriate utility, telecommunication and other service companies or the providers of the services hereinafter set forth for ingress and egress, and for the installation, maintenance, construction and repair of facilities, including, but not limited to, electric power, telephone, sewer, water, gas, drainage, drainage retention areas, irrigation, lighting, television transmission, cable television and communications systems transmission, reception and monitoring, security, garbage and waste removal and the like and for all purposes incidental thereto. The Association shall have the right to impose upon the Common Elements such easements and cross-easements for any of the purposes herein and similar purposes as it deems to be in the best interests of and necessary and proper for the Condominium.

(E) **Easements for Encroachments.** All of the Condominium property shall be subject to easements for encroachments, which now or hereafter exist caused by settlement or movement of any improvements upon such area or improvements contiguous thereto or caused by minor inaccuracies in the building or rebuilding of such improvements. Such easements shall be for the encroaching improvements and the reasonable use, maintenance and repair of same. Such easements shall be an appurtenance to and a covenant running with the respective Unit and/or other improvement in whose favor such easement exists. Any easements for encroachments shall continue until such encroachments no longer exist.

(F) **Air Space.** An exclusive easement shall exist for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

(G) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit and occupant, their respective guests, licensees and invitees for pedestrian traffic over, through and across sidewalks, streets, paths, walks and other portions of the Common Elements as from time to time may be intended and designated for such purpose and use, and vehicular and pedestrian traffic over, through, and across portions of the common elements as from time to time may be paved or intended for such easement.

(H) **Additional Easements.** The Condominium property is also subject to all easements affecting the Condominium property recorded in the Public Records of Collier County, Florida.

10. **RESTRAINT UPON SEPARATION AND PARTITION.** The undivided share of ownership in the Common Elements and Common Surplus appurtenant to a unit cannot be

conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Units.

11. **INSURANCE PROVISIONS.** Insurance shall be carried and kept in force at all times in accordance with the following:

11.1 **Unit Owners.** Each unit owner shall be responsible for obtaining individual property and general liability policies insuring the property lying within the boundaries of their unit that the Association is not obligated to insure, and for their personal liability arising in the use of their own unit and other areas of the common elements for which they have exclusive use or for which they have an obligation to repair or replace and shall provide the Association with a certificate of insurance upon request.

11.2 **Association.** The Association, by and through its Board of Directors, shall obtain and keep in force all insurance coverage required by law and these condominium documents, as well as such other insurance coverage as the Board of Directors may deem necessary.

11.2.1 **Required Coverage.** The Association, by and through its Board of Directors, shall maintain adequate insurance coverages on the Association and on the buildings and other improvements on the condominium property with such deductibles as the Board of Directors deems appropriate.

(A) **Property.** The Association shall obtain property insurance covering all insurable property and improvements within the Condominium, including personal property owned by the Association but excluding the items indicated in paragraph 11.1 above. Such insurance shall include coverage for the perils of fire, hurricane, lightning, wind, flood, hail, explosion, smoke damage, vandalism and malicious mischief, demolition, collapse, water damage, and sprinkler leakage. The limits of insurance provided by these policies shall be at least equal to the amounts required under any coinsurance clauses or other policy provisions. The policy limits and coverages shall apply on a "replacement cost" and/or "agreed amounts" basis.

(B) **General Liability.** Comprehensive General Liability Insurance covering liability claims including coverage for Bodily Injury, Property Damage and Personal Injury arising from exposures including but not limited to premises operations, Owner's protective, contractual liability and personal injury.

(C) **Umbrella Liability or Excess Liability Coverage.** An umbrella or excess liability policy shall be maintained in a minimum policy limits of \$7,000,000.00 per occurrence/\$7,000,000.00 annual aggregate.

(D) **Directors and Officers Liability Insurance.** The Board of Directors shall obtain Directors and Officers Liability Insurance at appropriate limits and deductibles to protect the Association and the individual Directors and Officers



for claims arising from their decisions and actions performed on behalf of the Association.

(E) **Fidelity Bonding**. Fidelity Bonding to protect the Association against financial loss by dishonest acts of all persons who control or disburse funds of the Association.

(F) **Worker's Compensation**. Insurance for claims under worker's compensation and employer's liability, disability benefit and other similar employee acts which are applicable to the Association, with the limits for worker's compensation and employer's liability insurance in an amount not less than the minimum statutory amounts mandated.

11.2.2. **Optional Coverage**. The Association may maintain such other insurance as the Board of Directors or the unit owners may, from time to time, deem to be necessary and/or appropriate and in the best interests of the Association and the unit owners.

11.2.3 **Deductibles**. At the discretion of the Board, all policies may be written with reasonable deductibles consistent with industry standards and prevailing practice for communities of similar size, age, construction and facilities in Collier County, Florida.

11.2.4 **Appraisal for Insurance Purposes**. An insurance appraisal or updated insurance appraisal shall be conducted at least once every thirty-six (36) months.

11.2.5 **Form of Policy and Insurance Trustee**. The Association may, to the extent possible and not inconsistent with the foregoing, obtain one (1) policy to insure all of the insurable loss exposures of the Condominium and the Association. The premiums for such coverage and other expenses in connection with said insurance shall be paid by the Association and assessed as part of the common expenses. The Association shall use its best efforts to place its insurance coverages with companies that are authorized, licensed and admitted to do business in the State of Florida with a minimum AM Best rating in the A category. The managing insurance agents or brokers must be licensed in the State of Florida. The Association shall have the right to designate a trustee ("Insurance Trustee"). Thereafter, the Association from time to time shall have the right to change the Insurance Trustee to such other trust company authorized to conduct business in the State of Florida or to such other person, firm or corporation as shall be acceptable to the Board. Notwithstanding anything in this Third Amended and Restated Declaration to the contrary, the Board may act as the Insurance Trustee hereunder. If no Insurance Trustee is required, the Board shall receive, hold and/or expend insurance proceeds in the manner hereinafter provided as if it were the Insurance Trustee.

11.2.6 **Required Policy Provisions**. If possible, all such aforesaid policies shall provide that they may not be canceled without at least thirty (30) days' prior written notice to the Association and Listed Mortgagees and a copy of the policy shall be provided to the Insurance Trustee upon its written acknowledgment that the policies and any proceeds thereof will be held in accordance with the terms hereof. Said policies shall provide that all insurance proceeds payable on account of loss or damage may be payable to an Insurance Trustee. In the event of a casualty loss, the Insurance Trustee with prior Board approval may

deduct from the insurance proceeds collected a reasonable fee for its services as Insurance Trustee. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association. The Insurance Trustee shall not be liable for payment of premiums, the renewal or the sufficiency of the policies nor the failure to collect any insurance proceeds. If the Board acts as Insurance Trustee, then references herein to Insurance Trustee shall refer to the Board.

11.2.7 **Restrictions of Mortgagees.** No mortgagee shall have any right to participate in the determination of whether property is to be rebuilt, nor shall any mortgagee have the right to apply insurance proceeds to repayment of its loan unless such proceeds are distributed to owners and/or their respective Institutional Lenders.

11.2.8 **Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, its unit owners, and mortgagees as their interests may appear. All proceeds from policies purchased by the Association shall be made payable solely to the Association. The Association shall receive such proceeds and hold and otherwise disburse them for the purposes stated herein and for the benefit of the unit owners and their mortgagees in the following shares:

- (A) **Units.** Proceeds received on account of damage within units shall be held in prorated shares, based upon the amount of damage within each damaged unit as a percentage of the total damage within all units.
- (B) **Common Elements.** Proceeds received based on damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit being the same as the share in the common elements (each unit has an equal share). Uninsured losses and other damages in excess of insurance coverage shall be paid as common expenses.
- (C) **Mortgagees.** In the event a mortgagee endorsement has been issued to a unit or mortgagee, the shares of the unit owner and the mortgagee shall be as their interests appear. No mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty, unless otherwise provided for herein.

11.2.9 **Distribution of Insurance Proceeds and Losses.** Proceeds from insurance policies shall be distributed to or for the benefit of the unit owners and/or the Association as follows:

- (A) **Insurance Trustee.** All expenses of any Insurance Trustee shall be paid first.
- (B) **Reconstruction or Repair.** If the damage for which proceeds are paid is to be reconstructed or repaired, any remaining proceeds shall be paid in accordance with the provisions of 11.2.8 (A) and (B) above. Any sums remaining thereafter shall be distributed to the unit owners, provided that any remittances to unit owners that have a mortgage on their unit shall be made payable jointly to the unit owner and the mortgagee.

(C) **Failure to Reconstruct or Repair.** If it is determined that the damages for which the insurance proceeds were paid will not be reconstructed or repaired, the proceeds attributable to that damage shall be distributed to the unit owners, provided that any remittances to unit owners that have a mortgage on their unit shall be made payable jointly to the unit owner and the mortgagee.

12. **ASSOCIATION.** The operation of the Condominium shall be by Enclave of Naples Condominium Association, Inc., as follows:

12.1 **Governance and Operation.** The governance and operation of the Condominium shall be by Enclave of Naples Condominium Association, Inc., adhering to Florida Statutes and Enclave Condominium documents in the following order:

- A. Florida Statutes
- B. Declaration of Condominium
- C. Articles of Incorporation
- D. Bylaws
- E. Rules and Regulations

12.2 **Conflict of Governance Documentation.** In the event there shall be any conflict in fact or interpretation as between any of the aforementioned A. through E. in 12.1 above, they shall prevail in the order so specified.

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

12.4 **Membership.** The membership of the Association shall be the record owners of legal title to the units, as further provided in the Bylaws.

12.5 **Acts of the Association.** Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these Condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

12.6 **Powers and Duties.** The powers and duties of the Association include those set forth in the Condominium Act and the Condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association property. The Association may impose fees for the use of common elements or Association property.

12.7 **Purchase of Units**. The Association has the authority to purchase one or more units in the Condominium, and to own, mortgage, or convey them.

12.8 **Acquisition of Property**. The Association has the authority to acquire property, both real and personal.

12.9 **Disposition of Property**. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold or otherwise encumbered or disposed of by the same authority as would be required to acquire it.

12.10 **Roster**. The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the Unit owners.

12.11 **Limitation on Liability**. Notwithstanding its duty to maintain and repair Condominium or Association property, the Association shall not be liable to individual unit owners or any other person for personal injury or property damage other than the cost of maintenance and repair of items for which the Association is otherwise responsible caused by any latent defect or unknown condition of the Condominium Property. The Association shall not be liable for any such injury or damage caused by defects in design or workmanship, or any other reason connected with any alterations or improvements done on behalf of any unit owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions contained herein.

Notwithstanding anything contained herein or in the Condominium documents or any other document governing or binding the Association, the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property, including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:

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

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

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

12.11.4 Mold occurs naturally in almost all indoor environments. Mold spores may also enter a condominium through open doorways, window or a variety of other sources. The unit owner acknowledges that the Condominium is located in a hot, humid climate which is conducive to the growth of mold and/or mildew. Mold and/or mildew may be present during or after construction in the indoor air and/or on the interior surfaces of the unit, including but not limited to, wall cavities, windows, and/or the exterior surfaces of the unit or any part hereof. Each unit owner, by virtue of his acceptance of title to his unit and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property by virtue of accepting such interest or lien or making such uses shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision. As used in this section "Association" shall include within its meaning all of the Association's Directors, officers, committee members and employees. The Association shall not be responsible for the prevention of mold and/or mildew or any damages, including any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income, diminution or loss of value of the unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold or mildew. Each unit owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium property by virtue of accepting such interest or making such uses shall be bound by this provision and shall be deemed to have automatically waived any and all claims, obligations, demands, damages, causes of action, liabilities, losses and expenses, whether now known or hereafter known, foreseen or unforeseen, that purchaser has or may have in the future, in law or in equity arising out of, relating to, or in any way connected with indoor air quality, moisture or the growth, release, discharge, dispersal or presence of mold and/or mildew or any chemical or toxin secreted therefrom.

12.12 **Official Records.** The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized personal representatives at all reasonable times subject to procedures adopted by the Board of Directors. The right to inspect the records includes a right to make or obtain photocopies at the expense of the member seeking copies. The Association shall allow a member or his or her authorized representative to use a portable device, including smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the Association providing the member or his or her authorized representative with a copy; the Association may not charge a member or his or her authorized representative for the use of a portable device.

12.13 **Voting Interests.** The Owner or Owners, collectively, of the fee-simple title of record for each unit shall have the right to one (1) vote per unit in the Association as to the matters on which a vote by the Owners is taken.

13. **ASSESSMENTS AND LIENS.** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set

forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in the Amended and Restated Bylaws, as follows:

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

13.2 **Certificate as to Assessments.** Within ten (10) days after request by a unit owner or Mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the Condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

13.3 **Common Expenses.** Common expenses include the expenses of operation, maintenance, repair, replacement and insurance of the common elements and Association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors contracts for pest control within units or basic cable television programming services or internet services in bulk for the entire Condominium, the cost of such services shall be a Common Expense. The Board of Directors shall have the authority to acquire and install water leak detection sensors in each. The cost of the acquisition and installation of the sensors is a Common Expense, shares by all unit owners in equal percentages.

13.4 **Share of Common Expenses.** The owner of each unit shall be liable for a share of the Common Expenses equal to his share of ownership of the Common Elements and the Common Surplus.

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

13.6 **Who is Liable for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable except as to certain first mortgagees as required under Florida law. Whenever title to a Condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

13.7 **No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the Common Elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided as to certain first Mortgagees.

13.8 **Application of Payments; Failure to Pay; Interest.** Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee up to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorneys' fees, and finally to delinquent assessments.

13.9 **Acceleration.** If any special assessment or installment of a regular assessment as to a unit is unpaid forty-five (45) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, or may be sent separately.

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

13.11 **Lien for Charges.** There is hereby created a common law and contractual lien to secure any service which the Association provides for an individual member and which is not otherwise secured by the statutory lien for Common Expenses created herein. By way of example, a lien for Charges exists to secure repayment to the Association when it must remove or reinstall unit owner alterations or items of unit owner maintenance responsibility on connection with the Association's discharge of its common element maintenance responsibilities, or address emergency situations, such as water extraction from a unit. The lien for Charges shall be of equal priority to, shall be secured as to interest, late fees and attorneys' fees and the like, and shall be foreclosed in the same manner as the common expense lien.

14. **BOARD'S RULE-MAKING POWER.** The Association, through its Board, may, from time to time, promulgate such other rules and regulations with respect to the Condominium as it determines to be in the best interests of the Condominium, the Owners and the Association.

15. **MAINTENANCE: LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS.** In addition to those responsibilities set forth herein, responsibility for the protection, maintenance, repair and replacement of property shall be as follows:

15.1. **Association Maintenance.** The Association, by and through its Board of Directors, is responsible for the protection, maintenance, repair and replacement of all Common Elements and Association property (other than the Limited Common Elements that are required to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) All Common Elements and exterior surfaces of the condominium, including but not limited to, painting, waterproofing (unless otherwise provided for herein) and caulking exterior building walls.
- (B) All landscaping on the condominium property.
- (C) All electrical conduits, rough plumbing including all sewer lines and drains and other installations located within a unit but serving another unit or located outside the unit for the furnishing of utilities to more than one unit or the common elements including:
  - 1. Electrical wiring from the transformer up to the circuit breaker panel serving each unit.
  - 2. All water supply lines up to the main water valve serving each unit.
  - 3. Main air conditioning condensation drain lines.
- (D) Communication and media lines up to the point of entry into a unit.
- (E) Painting the interior stairwell side of the entrance areas to the units.
- (F) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (G) Painting and regular maintenance (nonstructural) of building walls enclosed by balconies shall be done by the unit owners, subject to uniformity of appearance (e.g., color) and other criteria set by the Board, provided, however, the Board may elect to paint balcony walls and ceilings in connection with the painting of the building as either a common expense or voluntary participation basis, as determined by the Board.
- (H) Painting, maintaining, repairing and replacing all building railings including all railings on balconies.
- (I) All structural maintenance, repair and replacement of balcony floors (excluding floor coverings), ceilings and exterior portions and building walls enclosed by the balconies.



- (J) Fire sprinkler heads and related plumbing for fire suppression system and any fire suppression system equipment.
- (K) Unit dryer vents starting at the wall to the main vent stacks including the main vent stacks.
- (L) Exterior window washing.
- (M) Maintenance of parking facilities and garage doors.

In the event of an insurable casualty, the Association is obligated to repair or replace all portions of the building it is required to insure. Any portion not covered is a common expense.

The Association's responsibility shall not include electrical, plumbing or mechanical installations located within a unit and serving only that unit unless such work can only be reasonably accomplished by gaining access to an adjacent unit.

**15.2. Unit Owner Maintenance.** Each unit owner is responsible, at his own expense for all maintenance, repairs, and replacement of all portions of his own unit and Limited Common Elements serving only his unit, except those required to be maintained, repaired and/or replaced by the Condominium Association as indicated herein. The owner's responsibilities include, without limitation, the following:

- (A) All sliding glass door systems, including frames, tracks, thresholds, screens and hardware.
- (B) All windows including their frames and hardware; all windows shall be promptly replaced after they have reached their useful life per industry standard.
- (C) All window screens, screen doors or balcony screens, including trim, framing, and hardware.
- (D) All drywall, plasterboard and similar materials in the interior and perimeter walls and ceiling including their finishes, painting, tile, wall papering or other wall coverings.
- (E) All doors and their casings, including trim, caulking, locks and hardware.
- (F) All appliances, water heaters and vent fans.
- (G) All thermostats, air conditioning / heat pump systems including handlers, freon lines and duct work, air conditioning discharge lines to the point of the flow drain, and utility installations and connections serving an individual unit, no matter where located (if a line, utility, pipe or other services only one Unit, the responsibility for that line, utility, pipe, etc. for maintenance, repair and replacement lies with the Unit which it services).
- (H) All plumbing, sinks, tubs, showers, water shut off valves, including the main

valve, water heater, shower pan including the drain extending through their floor, plumbing fixtures and garbage disposal, all incoming plumbing from the point the plumbing comes off of the main line and inward into the Unit, all outbound plumbing lines up to the point of connection to a vertical disposal (even if outside of the unit boundary).

- (I) The circuit breaker box, all electric wiring, wall switches, receptacles (including the limited common elements areas) and fans.
- (J) All built in cabinets and vanities and their top surfaces.
- (K) Smoke detectors located within the unit.
- (L) Other electrical, plumbing, mechanical, facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (M) Dryer vents to the point of connection to the common pipe.
- (N) Automatic garage door openers for the garage appurtenant to the unit.
- (O) All balcony floor coverings, fixtures on or servicing a balcony, ceiling fans, light bulbs on balconies, and painting of building walls enclosing a balcony and balcony ceilings, subject to the provisions of Article 15.1 above. Unit owners may not puncture (by nails, hooks, screws or otherwise) balcony floors, or ceilings without the prior written approval of the Board.

All repairs, additions or replacements to electric systems, plumbing, windows, doors or fire detection systems must comply with current applicable City of Naples building codes and must be completed by a licensed and insured tradesman.

Any changes to lanai screens, windows or sliding glass doors style, exterior door handles or any other item which may affect the aesthetic appears of the building must receive prior approval of the Board of Directors.

All work done within or appurtenant to a Unit by a Unit owner must be in accordance with any specifications adopted by the Board of Directors as relates to such work.

Every unit owner must perform promptly all maintenance and repair work within his unit which, if not performed, would affect the common elements or a unit belonging to another owner. Each unit owner shall be expressly responsible for the damages and liabilities that his failure to perform his duties may engender.

If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air condition compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy

and voting at a meeting, or upon agreement by a majority of the total voting interests in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be deemed a common expense. All maintenance, repair and replacements not covered by the contracts shall be the responsibility of the unit owner.

15.3 **Other Unit Owner Responsibilities.**

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

(B) **Interior Flooring.** Hard floor surfaces (tile, marble, wood, etc.) may only be installed with prior written approval of the Board, which shall condition its approval upon the unit owner's agreement to the installation of appropriate sound-deadening material. Specifications for sound proofing of hard flooring must be approved in writing by the Board prior to installation, and the installed soundproofing subsequently inspected and approved prior to installation of the hard flooring itself. If the installation is made without prior approval and adequate absorbent underlayment, the Board of Directors may, in addition to exercising all the other remedies provided in this Declaration, require the removal of such hard surface flooring at the expense of the offending unit owner.

(C) **Exterior Floorings.** No carpeting or river rock of any kind may be installed on or affixed to concrete surface exposed to the elements. In the event the Condominium Association effects any repairs and/or maintenance to the balconies, including, but not limited to waterproofing, the unit owner shall bear the cost of removal of the floor covering to enable the Condominium Association to conduct the work, and the unit owner shall bear the cost of replacement of the floor covering after the work is completed. In the event the unit owner does not promptly, after notice, effect the removal of the floor covering, the Condominium Association may make arrangements for the removal and replacement thereof and assess the unit owner for the cost thereof in the same manner and with the same effect as for payment of assessments, such as institute a lien if the invoice is not paid. Unit owners shall apply a new waterproofing membrane to their balconies whenever they change the floor covering.

(D) **Window/Door Coverings.** The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Condominium Association (backing is white or neutral). All coverings on screens in balconies or lanais must be approved in advance in writing by the Board. All window tinting must be in compliance with specifications set by the Board of Directors.

(E) **Modifications and Alteration.** If a unit owner makes any modifications, installations or additions to his unit or the Limited Common Elements, the Unit owner, and its successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of

repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Condominium Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium Property.

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

(G) **Water and Water Heater Shut Off.** Every unit owner or guest in a unit must turn off the main water valve (currently located in each unit) and water tank valve and electric to the water heater when a Unit will be unoccupied for more than forty-eight (48) consecutive hours. Any damage to other units or the common elements arising as a result of the failure by the unit owner to fulfill his duty shall be considered negligence on the part of said unit owner.

(H) **Preventative Maintenance.** Each unit owner shall conduct the preventative maintenance required under this provision: All air conditioning systems shall be given routine service on no less than an annual basis, and proof of service provided to the Board on no less than an annual basis. All appliances and equipment must be replaced after their useful life per industry standards. All washing machine hoses shall be steel lined. Dishwashers and washing machines shall be replaced when they have reached their useful life as determined within the industry.

(I) **Water Detection System.** The portion of the Water Detection System located within a Unit shall be maintained, repaired and replaced by the Unit within which it is located.

15.4 **Alteration of Units or Common Elements by Unit Owners.** No unit owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. No balcony may be enclosed in any way without prior written approval of the Board of Directors. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium. No unit owner may alter the landscaping of the common elements in any way without prior Board approval.

15.5 **Major Construction.** Any major construction and any construction that generates significant noise by unit owners must be done between May 15<sup>th</sup> and October 15<sup>th</sup> of the same year

and between the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. No work creating significant noise shall be done on a Saturday unless the work is of an emergency nature or is approved in advance in writing by the Board. No major construction is to be done after October 15<sup>th</sup> until May 15<sup>th</sup> of the following year, nor is any construction to be done on any Federal holidays. For the purposes of this provision, significant noise shall be deemed to include any tile or other flooring installation (except for carpeting, which shall be permitted year-round), removal, and/or replacement, moving or removal of any walls, and installation or removal of any cabinets. Permitted year-round work shall include wallpaper, painting and the replacement of appliances, draperies, mirrors, carpeting, lighting and plumbing fixtures. No construction dumpsters for debris for work done within a Unit shall be permitted. Carpeting shall only be done between May 1<sup>st</sup> and October 31<sup>st</sup>. The foregoing notwithstanding, the Board of Directors shall be empowered to make exceptions and approve major construction and construction that generates significant noise required as a result of a casualty, such as a flood, hurricane, storm damage, and/or fire. The Board of Directors shall be further empowered to require suspension of all non-emergency work and/or renovations during a pandemic or State of Emergency and for a reasonable period of time after the State of Emergency has ended and/or the pandemic abated, and may further re-define the phrase "Major Construction" from time to time as it deems appropriate.

**15.6 Alterations and Additions to Common Elements and Association Property.** The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Association, and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the Common Elements or the real property owned by the Association costing more than an amount equal to five percent (5%) of the Association's budget for the then current fiscal year, including reserves, without prior approval of at least a sixty percent (60%) of the voting interests who are present in person or by proxy, at any annual meeting or special meeting called for that purpose. With regard, however, to already existing common elements, if there is work reasonably necessary to protect, maintain, repair, replace or insure the Common Elements or Association property, even if the expenditure does constitute a material alteration or substantial addition to the Common Elements, no prior unit owner approval is required.

**15.7 Enforcement of Maintenance.** If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant Limited Common Elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, with or without notice to or consent of the unit owner, to repair, replace, or maintain any item which in the business judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses of collection, if any.

**15.8 Negligence: Damage Caused by Condition in Unit.** The owner of each unit shall be liable for all repairs made necessary by his act or negligence, or by that of any member of his family or his guests, employees, or agents. Each unit owner shall have the duty to turn off the main water supply to the unit prior to any vacancy for more than forty-eight (48) consecutive hours. Any damage to other units or the common elements arising as a result of a failure by the unit owner to fulfill this duty shall be considered negligence on the part of said unit owner.

15.9 **Association's Access to Units.** The Association has an irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the Common Elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The Association Management staff may conduct an inspection of all units for which the owner is not in residence. The Association shall retain a master key to all units. No unit owner shall alter any lock, nor install a new lock which does not conform to the master key system of the building. If the Association is not given a key, the unit owner shall pay all costs incurred by the Association in gaining entrance to the unit, as well as all damage to his unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

15.10 **Storm Shutters, Including Hurricane Shutters.** The Board of Directors has adopted hurricane protection specifications with factors deemed relevant by the Board including required inspections during and after installation; these specifications are subject to change by the Board from time to time. The Board may further rules and regulations relative to the location of and storage of storm shutters and/or hurricane shutters, as well as periods of use. All maintenance, repair and replacement of and liability for hurricane protection shall be the responsibility of the owner thereof including their removal, storage and reinstallation as necessary for the Association to fulfill its maintenance obligations. At its election, the Association may, but shall not be obligated to, undertake the responsibility of the removal, storage and/or reinstallation of hurricane protection.

15.11 **Combination of Units.** Units may not be combined into a single living space.

16. **USE RESTRICTIONS.** The use of the Condominium property shall be in accordance with the following provisions:

16.1 **Occupancy of Units; Single Family Residence.** Each unit shall be used solely as a Single-Family Residence. No more than twelve (12) persons may permanently occupy a unit. For the purposes of this provision, "permanently occupy" means to sleep in the unit for more than thirty (30) nights during a calendar year. No unit may be divided or subdivided into a smaller unit, nor any portion sold or otherwise transferred. No person may occupy a unit as a unit owner or Family member thereof (i.e., occupy the unit on an overnight basis for more than thirty (30) days in a calendar year) unless said person's occupancy has been specifically approved by the Association through the Board. In considering such requests, the Board may consider factors set forth in Article 18 and may charge a reasonable fee for review of occupancy requests. Units may not be used for commercial or business purposes. Owners and their Family members may use units for home office or telecommuting purposes, provided that such uses do not involve customers or clients coming onto the Condominium property, the posting of any signage in the Condominium, the storage of equipment, products or materials in the Condominium Unit, nor more than two regular deliveries per day of correspondence or similar items from customary express delivery services.

16.2 **Nuisances.** No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another

Unit, nor for any immoral, improper or unlawful purpose. The Condominium property shall be used in accordance with all federal, state, and local laws and ordinance.

16.3 **Signs.** No person may post or display "For Sale" or "For Rent" or other similar signs anywhere within the Condominium or on the Condominium property, nor shall they be displayed in any windows or in any manner be visible from the exterior, without the prior written consent of the Manager.

16.4 **Use of Unit Exteriors and Common Elements.** Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Terraces/balconies, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

16.5 **Antennae: Aerials: Radio Transmissions.** No antennae or aerials shall be placed upon any portion of the Condominium property, unless completely inside a unit, nor shall ham radios or radio transmission equipment be operated within the Condominium property, without prior written consent of the Board of Directors unless they are otherwise permitted under Florida or Federal law.

16.6 **Vehicles.** No travel trailers, mobile homes, campers or recreational vehicles shall be permitted on any portion of the Condominium property.

16.7 **Pets.** Two cats or dogs (two animals in total) not to exceed 30 pounds in weight each nor 17 inches at the shoulder may be kept on the premises, provided they are kept on a leash while outside the Owner's unit; the Board shall have the discretion to change this weight and/or height limitation. If any pet kept on the premises should be found by the Board to constitute a nuisance, then the owner, when so notified in writing, shall be required to immediately remove said pet from the premises.

16.8 **Window Décor.** All draperies, curtains, shades or other window or door coverings installed within a unit which are visible from the exterior of the Unit must have a backing which is white or neutral in color.

16.9 **Absence of Owner.** All water to the unit shall be turned off at the water shut off valve prior to the occupant(s) leaving the Unit for more than forty-eight (48) consecutive hours. Owners leaving for more than two (2) consecutive weeks shall turn off the main water valve, hot water valve, water tank, ice machine and close the balcony/terrace/lanai hurricane shutters. Each owner who plans to be absent from his unit for a period of more than two (2) consecutive weeks and whose balcony is not enclosed with shutters must prepare his unit prior to departure by removing all furniture, potted plants and other movable objects, if any from his balcony.

16.10 **Park Shore Covenants.** The Condominium property is also subject to a Covenant of Restrictions for Lots 16 through 29 of Park Shore Unit No. 5, recorded at O.R. Book 771, Page 1161, et. seq., Public Records of Collier County, Florida, and contains additional pet restrictions limiting pets to dogs or cats, as well as other covenants, and restricting construction, outdoor structures, appearance and providing for plan approval.

16.11 **Guest Suites**. Guest Suite 1 and Guest Suite 2, which are Common Elements, will be available to unit owners for use by their guests. The Board shall have the right to make and amend reasonable rules and regulations governing the use and occupancy of the suites. The Board shall have the authority to require security deposits and impose use fees in amounts adequate to cover the costs of maintaining such suites. Should there be any damage to any of the Guest Suites, while the same is occupied by a guest of a unit owner, the unit owner whose guest causes the damage shall be liable for the damage and the cost of repairing the damage may be enforced as a special charge against the unit owner liable, therefore.

16.12 **Guest Occupancy**. There are various types of guest uses, which are regulated as follows:

16.12.1 **Non-Overnight Visitation by Guests When Unit Owner is in Residence**. There is no restriction against this type of guest provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict or prohibit guest visitation by convicted felons, including registered sex offenders and persons who have been convicted of narcotic offenses. Non-overnight guests need not be registered with the Association. Non-overnight guest guests shall be entitled to use the Condominium facilities only when accompanied by the unit owner or an adult resident member of the unit owner's family, unless otherwise approved by the Board. The Board may establish additional restrictions on non-overnight guest usage of Condominium facilities such as maximum numbers of guests who may use common facilities, maximum numbers of common facility usages per guest.

16.12.2 **Overnight Guests When Unit Owner is in Residence**. Unit owners and their respective families may have related or unrelated overnight guests, so long as the unit owner is in simultaneous residence. There is no requirement for registration of overnight guests with the Board. The Association may restrict or prohibit guest visitation by convicted felons, including registered sex offenders and persons who have been convicted of narcotic offenses.

16.12.3 **Non-Overnight Guest in the Absence of the Unit Owner**. Unit owners are not permitted to have non-overnight guests when the unit owner is absent from the Condominium. Unit owners may have their units inspected by caretakers, family members, etc.

- (i) Non-Related Overnight Guests in the absence of the Owner will be limited to two (2) occupancies per calendar year, for a period not to exceed fourteen (14) days. Ten (10) days prior notice to the Association is required.
- (ii) Related Overnight Guest may occupy a unit in the absence of the owner. For the purpose of this provision, "related" means all persons who are staying in the unit on an overnight basis, in the absence of the owner, are related to the unit owner or primary occupant (by blood marriage, or adoption) to the following degree: parent, grandparent, child, grandchild or sibling. Ten (10) days prior notice to the Association is required.



16.12.4 **Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that unit owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial/relationship, an Affidavit as to absence of payment for the right to occupy the premises, and such other documentation as the Board deems reasonable or appropriate.

17. **LEASING OF UNITS IS PROHIBITED.** No unit owner may lease his unit for any reason at any time.

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

18.1 **Forms of Ownership:**

(A) **One Person.** A unit may be owned by one natural person who has been approved by the Board of Directors, unless otherwise provided for herein.

(B) **Two or More Persons.** Co-ownership of units by two or more natural persons is permitted. If the owners are other than husband and wife, the Board may condition its approval upon the designation of one approved natural person as "primary occupant." The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section. The Board shall have the discretion to approve no more than one such change in any twelve (12) month period.

(C) **Ownership by Corporations, Limited Liability Companies, Partnerships or Trusts.** A unit may be owned in trust, or by a corporation, limited liability company, partnership or other entity, which is not a natural person, if approved by the Board of Directors, at its sole discretion. The intent of this provision is to allow flexibility in estate, financial or tax planning and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families, nor used as a "perk" for guests of units owned by business entities, religious or charitable organizations and the like. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the primary occupant. The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership subject to the provisions of this Section. The Board shall have the discretion to approve no more than one such change in any twelve (12) month period.

(D) **Life Estate.** A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided herein. In that event, the life tenant shall

be the only member from such unit, and occupancy of the unit shall be as if the life tenant were the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all assessment and charges against the unit. Any vote, consent or approval required by the Condominium documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for the purposes of determining voting and occupancy rights.

#### 18.2 Transfers Subject to Approval

(A) Sale. No unit owner may dispose of a unit or any ownership interest in a unit by sale without prior written approval of the Board of Directors. No unit owner may dispose of a unit or any interest therein by other means (including agreement for deed, installment contract, or other similar transactions) without prior written approval of the Board.

(B) Gift. If any unit owner acquires his title by gift, the continuance of his ownership of his unit shall be subject to the approval of the Board. Notice must be given at least thirty (30) days prior to the intended closing or title transfer date. Approval to own or occupy may not be denied to any gift recipient who was the prior owner's lawful spouse at the time of the gift, or was related by the gifting owner by blood or adoption.

(C) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, the continuance of his ownership of his unit shall be subject to the approval of the Board. Approval to own or occupy may not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the deceased owner by blood or by adoption.

(D) Transfers to Trusts. Approval to own or occupy a unit may not be denied to any person who is the recipient of use or occupancy rights arising from transfer to a trust, where the Grantor or Settlor of the trust is a unit owner and the beneficiary or other person entitled to use or occupancy under the Trust Agreement was the owner's lawful spouse or was related to the owner by blood or adoption.

(E) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined herein.

(F) Delegation of Approval Authority. To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may, by resolution, delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) Association members. The Chairperson of the committee shall be deemed a

Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

### 18.3 Procedures

#### (A) Notice to Board

(1) Sale. A unit owner intending to make a bona fide sale of his unit or any interest in it shall give to the Board notice of such intention, together with the name and address of the intended purchaser, an executed copy of the purchase contract and its exhibit and such other information concerning the intended purchase and the transaction as the Board may reasonably require. The Board may require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references and a personal interview with the purchaser(s) and all proposed unit occupants. Such notice at the unit owner's option may include a demand by the unit owner that the Association furnish a purchaser of the unit if the proposed purchaser is not approved.

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

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

#### (B) Certificate of Approval

(1) Sale. If the proposed transaction is a sale, then within thirty (30) days after receipt of such notice and information, including a personal interview if requested by the Board, the Board of Directors must either approve or disapprove the proposed transaction.

(2) Gift, Devise or Inheritance; Other Transfers. If the unit owner giving notice has acquired his title by gift, devise or inheritance, or in any other manner, then within thirty (30) day after receipt of such notice and information, and a personal interview if requested by the Board, the Board must either approve or disapprove the continuance of the unit owner's ownership of his unit.

(3) Approval of Occupant. If the unit owner or purchaser is a corporation, partnership, trust, some other entity, or more than one individual who are not husband and wife, the approval of ownership by the corporation,

partnership, trust, other entity or multiple persons shall be conditioned upon approval of a primary occupant.

**(C) Disapproval by the Board.**

(1) **Sale.** If the proposed transaction is a sale, then within thirty (30) days after receipt of notice and information the Association shall deliver or mail by certified mail to the unit owner an agreement to purchase the unit in question by a purchaser approved by the Board (including the Association itself), who will purchase and to whom the unit owner must sell the unit upon the following terms:

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

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

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

(a) The purchase price shall be the fair market value determined by arbitration in accordance with then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers, one of whom shall be appointed by the unit owner and the other of whom shall be appointed by the Association, who shall base their determination upon an average of their appraisals of the unit, and a judgment of specific performance of the sale upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. The expense of the arbitration shall be shared by the parties.

(b) The purchase price shall be paid in cash. The sale shall be closed within ten (10) days following the determination of the sale price. If the Association shall fail to provide a purchaser upon the demand of the unit owner in the manner provided, or if a purchaser furnished by the Association shall default in agreement to purchase, then notwithstanding the disapproval, the proposed transaction shall be deemed to have been approved and the Association shall furnish a certificate of approval.

(3) **Disapproval for Good Cause.** Approval of the Association for title transfers shall be withheld only if a majority of the whole Board so votes. The Board shall consider the following factors and may confer freely with counsel in reaching its decision. Only the following may be deemed to constitute good cause for disapproval:

(a) The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereafter include all proposed occupants) intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the condominium.

(b) The person seeking approval (which shall include all proposed occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude, or any felony.

(c) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other social organizations or associations, or by his conduct in this condominium or other residences as an Owner.

(d) The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner.

(e) The unit owner requesting the transfer has had fines assessed against him which have not been paid, or

(f) All assessments and other charges against the unit have not been paid in full.

19. **RECONSTRUCTION OR REPAIR AFTER CASUALTY.** If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

19.1 **Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owners of the damaged units in proportion to their ownership interest in the damaged property. The owners of the damaged units shall be responsible for reconstruction and repair and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage.

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

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

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

19.3 **"Very Substantial" Damage**. As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least a majority of the total units cannot reasonably be rendered habitable within sixty (60) days. Should such "very substantial" damage occur then;

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

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

A membership meeting shall be called by the Board of Directors to be held not later than thirty (30) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other Association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished with a special assessment not exceeding fifteen percent (15%) of the total annual budget, excluding reserves, for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless a majority of the total voting interests vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred (excluding reserves), then unless a majority of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If the requisite number of unit owners approve reconstruction, the Board of Directors shall levy such assessments as are necessary and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and restoration of the property.

(C) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination approved by at least a majority of the Board of Directors shall be conclusive, and shall be binding upon all unit owners.

19.4 **Application of Insurance Proceeds** It shall always be presumed that monies disbursed for repair and restoration come first from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided for herein.

19.5 **Equitable Relief** In the event of damage to the common elements which renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

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

19.7 **Association as Agent; Insurance Trustee** The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property. Alternatively, the Board of Directors may select an independent Insurance Trustee. In such event any proceeds will be paid to or any undisbursed proceeds in the control of the Association will be paid over to the Independent

Insurance Trustee. All persons for whose benefit such insurance is held shall be bound by the Association's selection of the Insurance Trustee.

## 20. CONDEMNATION:

20.1 Deposit of Awards with Association. 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 charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

20.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

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

20.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation, except as may otherwise be required by F.S. 73.073.

20.5 Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the Common Elements, the additional funds required for those purposes shall be raised by special assessment against all Unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the Common Elements after the changes affected by the taking.

20.6 Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following: The unit owner and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. If there is a first mortgage, the first mortgagee shall have the right, but not the obligation, to appoint a third state certified appraiser to participate in this process. A judgment of



specific performance upon the fair market value calculated in this manner may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

20.7 **Taking of Common Elements.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

20.8 **Amendment of Declaration.** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of the common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration in conformity to the changes mandated herein. Such amendment need be approved only by the owners of a majority of the units. Approval of joinder by lien holders is not required for any such amendment.

## 21. **TERMINATION OF CONDOMINIUM.**

- A. If all unit owners and the holders of all liens and mortgages upon all of the Condominium Parcels execute and duly record an instrument terminating the Condominium Property, or if "major damage" occurs as defined herein and subject to Section 9.1 (C) (of the original recorded Declaration of Condominium), the Condominium property shall be removed from the provisions of the Condominium Act and thereafter owned in common by the unit owners. The

undivided interest in the Property owned in common by each unit owner shall then be the percentage of the undivided interest previously owned by such owner in the Common Elements, and any liens which encumbered any Condominium Parcel shall be transferred to said undivided interest of the unit owner in the Property.

- B. If the Condominium is terminated, the owners of the units shall continue to be responsible for their share of the common expenses attributable to the Condominium property and all other Association expenses, as set forth in this Declaration and the By-Laws.
- C. If the owners of at least seventy-five (75%) of the common elements elect to terminate, they shall have the option to buy the units of the other unit owners for a period of sixty (60) days from the date of the meeting wherein the election to terminate was taken. The purchase price shall be the fair market value of the units as of the date of said meeting as determined by arbitration under the rules of the American Arbitration Association. The price shall be paid in cash within thirty (30) days of the determination of same.

This section concerning termination cannot be amended without consent of ninety-five (95%) percent of all unit owners and ninety (90%) of all record owners of first mortgages upon the units.

## 22. ENFORCEMENT.

22.1 **Duty to Comply; Right to Sue.** Each unit owner and his guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Condominium documents and the rules and regulations of the Association. Each unit owner shall be considered ultimately responsible for violations committed by his family members, guests and other occupants. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

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

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

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

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

22.5 **Creation and Enforcement of Charges.** The Association shall have a cause of action against unit owners to secure payment to the Association by unit owners of all charges, costs and expenses to the Association which cannot be secured as assessments, regular or special, under F.S. 718.116. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorneys' fees, including appeals, incurred in collection.

## 23. RIGHTS OF MORTGAGEES.

23.1 **Approvals.** Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided regarding Condemnation of a portion of a unit or an entire unit.

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

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

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

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

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

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

24.1 **Proposal.** Amendments to this Declaration may be proposed by the Board of Directors or by written petition to the Board signed by the owners of at least one-fourth (1/4th) of the units.

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

24.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed amendment is approved by the vote of a majority of all voting interests present in person or by proxy and voting at any annual meeting or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting if the Bylaws so provide for an alternative method.

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

24.5 **Proviso.** No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and any institutional mortgagee holding a mortgage on

the unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain nor to mergers.

24.6 **Automatic Amendment.** Whenever Chapter 718, Florida Statutes, and/or Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations as amended from time to time, are amended to impose procedural requirements less stringent than those set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements.

## 25. **MISCELLANEOUS**

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

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

25.3 **Access Commons "D" and Commons "V".** The Association owns an undivided 1/6<sup>th</sup> fee interest in Commons "V" and an undivided 1/4<sup>th</sup> interest in Access Commons "D", Park Shore Unit No. 5, according to plat in Plat Book 12, Pages 39 and 40, Public Records of Collier County, Florida. The Association is a member of Commons "V" Association, Inc. and Access Commons "D" Association, Inc. Restrictive Covenants and the Articles of Incorporation of Commons "V" Association, Inc., a Florida non-profit corporation, are recorded in Official Records Book 777, Pages 146 through 152, of the Public Records of Collier County, Florida. The Articles of Incorporation of Access Commons "D" Association, Inc., a Florida non-profit corporation are recorded in Official Records Book 777, Pages 132 through 138, of the Public Records of Collier County, Florida. Commons "V" and Access Commons "D" will be for the use and benefit of unit owners. Commons "V" Association assessments and Access Commons "D" Association assessments shall be common expenses of the Association.

INDEX TO  
THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION FOR  
ENCLAVE OF NAPLES CONDOMINIUM ASSOCIATION, INC.

1.	Name .....	Page 1
2.	Purpose and Powers .....	1
3.	Membership .....	3
4.	Term .....	3
5.	Bylaws .....	3
6.	Amendments .....	3
7.	Directors and Officers .....	4
8.	Indemnification .....	4
	CERTIFICATE .....	4

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THIRD AMENDED AND RESTATED ARTICLES OF INCORPORATION  
FOR  
ENCLAVE OF NAPLES CONDOMINIUM ASSOCIATION, INC.

In compliance with the requirements of Chapter 617, Florida Statutes, the undersigned all of whom are of full age, have this day voluntarily associated themselves together for the purpose of forming a corporation not-for-profit and do hereby certify:

ARTICLE I

The name of the corporation, hereinafter called "Condominium Association" is ENCLAVE OF NAPLES CONDOMINIUM ASSOCIATION, INC. and the corporate office address shall be the address as reflected on the website of the Florida Secretary of State's office at [www.sunbiz.org](http://www.sunbiz.org) or at such other place as may be designated by the Board of Directors from time to time.

ARTICLE II

**PURPOSE AND POWERS:** The purpose for which the Condominium Association is organized is to provide an entity in accordance with the Condominium Act for the operation of Enclave of Naples, a Condominium, located in Naples, Collier County, Florida.

The Condominium Association is organized and shall exist upon a non-stock basis as a not-for-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Condominium Association shall be distributed or inure to the private benefit of any member, Director or Officer of the Condominium Association. For the accomplishment of its purposes, the Condominium Association shall have all of the common law and statutory powers and duties of a corporation not-for-profit under the laws of the State of Florida and, as provided in these Third Amended and Restated Articles of Incorporation, the Third Amended and Restated Declaration of Condominium, and the Third Amended and Restated Bylaws of the Florida Condominium Act, as they may be amended from time to time, and shall be subject to and shall be exercised in accordance with such provisions, provided that, in the event of conflict, the provisions of the Florida Condominium Act shall control over those of the Third Amended and Restated Declaration of Condominium and the Third Amended and Restated Bylaws.

The Condominium Association shall have all the powers and duties reasonably necessary to operate the Condominium pursuant to the Third Amended and Restated Declaration and as it may hereafter be amended, including, but not limited to, the following:

- A. To make and collect assessments against the members of the Condominium Association in order to defray the costs, expenses and losses of the Condominium Association, and to use the proceeds of said assessments in the exercise of its powers and duties;
- B. To protect, maintain, repair, replace and operate the Condominium property and Condominium Association property;
- C. To purchase insurance on the Condominium property and Condominium Association property for the protection of the Association, its members and their mortgagees;
- D. To make, amend and enforce reasonable rules and regulations governing the use of the common elements and the operation of the Condominium Association;
- E. To approve or disapprove the transfer, mortgage, ownership and occupancy of units, as provided by the Third Amended and Restated Declaration of Condominium and the Third Amended and Restated Bylaws;
- F. To reconstruct improvements after casualty and to make further improvements of the property;
- G. To enforce the provisions of the Condominium Act, the Third Amended and Restated Declaration of Condominium, these Third Amended and Restated Articles of Incorporation, the Third Amended and Restated Bylaws and any Rules and Regulations of the Association, as amended;
- H. To contract for the management and maintenance of the Condominium Association and the Condominium property, and to delegate any powers and duties of the Condominium Association in connection therewith except such as are specifically required by the Third Amended and Restated Declaration of Condominium to be exercised by the Board of Directors or the membership of the Condominium Association;
- I. To employ accountants, attorneys, architects and other professional personnel to perform the services required for the proper operation of the Condominium;
- J. To acquire real and personal property in the name of the Condominium Association;
- K. To borrow money, if necessary, to perform its other functions hereunder.

All funds and the title to all property acquired by the Condominium Association shall be held for the benefit of the members in accordance with the provisions of the Third Amended and Restated Declaration of Condominium, these Third Amended and Restated Articles of Incorporation, and the Third Amended and Restated Bylaws, as may be amended from time to time.

The Condominium Association shall not pay a dividend to its members and shall make no distribution of income to its members, Directors or Officers and, upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not-For-Profit Corporation Act (Chapter 617, Florida Statutes).

ARTICLE III

MEMBERSHIP. The members of the Association shall consist of all record owners of a fee simple interest in one or more units in the Condominium, and as further provided in the Third Amended and Restated Bylaws. After termination of the Condominium, the members shall consist of those who are members at the time of such termination. After receiving approval of the Association as required by the Third Amended and Restated Declaration of Condominium, change of membership shall be established by recording in the Public Records of Collier County, Florida, a deed or other instrument and by delivery to the Condominium Association of a copy of such instrument. The share of a member in the funds and assets of the Condominium Association cannot be assigned or otherwise transferred in any manner except as an appurtenance to his unit. The owners of each unit, collectively, shall be entitled to one vote in the Condominium Association matters as set forth in the Third Amended and Restated Declaration of Condominium and Third Amended and Restated Bylaws. The manner of exercising voting rights shall be as set forth in the Third Amended and Restated Bylaws

ARTICLE IV

TERM: The term of the Condominium Association shall be perpetual.

ARTICLE V

BYLAWS: The Third Amended and Restated Bylaws of the Condominium Association may be amended or rescinded in the manner provided for therein.

ARTICLE VI

AMENDMENTS: Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Amendments may be proposed by the President of the Association, a majority of the Directors, or by twenty-five percent (25%) of the entire voting interests. These Articles shall be deemed amended by a vote of a majority of the voting interests present in person or by proxy and voting at a duly called meeting.



Whenever the provision of Florida Statute Chapter 718 and 617, as amended, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than those set forth in these Articles, the Board may operate the Association pursuant to the less stringent requirements.

Any amendment shall become effective upon filing with the Secretary of State and recording a copy in the Public Records of Collier County, Florida.

#### ARTICLE VII

**DIRECTORS AND OFFICERS:** The affairs of the Condominium Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Third Amended and Restated Bylaws but, in any event, no less than three (3) Directors. All Directors shall be elected by the members in the manner detailed in the Third Amended and Restated Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided in the Third Amended and Restated Bylaws. The Officers shall conduct the business of the Association and shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Condominium Association and shall serve at the pleasure of the Board.

A Director shall discharge his or her duties as a Director, including any duties as a member of a Committee: in good faith; with the care an ordinary prudent person in a like position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association.

#### ARTICLE VIII

**INDEMNIFICATION:** The Condominium Association shall indemnify every Director and every officer of the Association against all expenses and liabilities including attorneys' fees incurred by or imposed on them in connection with any legal proceeding to which he may become a party as a result of his position as an officer or Director of the Association provided, however, said indemnification shall not apply in the event of gross negligence or willful misconduct of the Director or officer, or in any criminal action, unless the Director or officer acted in good faith and in a manner he reasonably believed was in the best interest of the Condominium Association. Indemnification shall also not apply in the event that there is a Final Judgment or other judicial or quasi-judicial determination that establishes that the act and/or omission is material and the person seeking the indemnification derived an improper personal benefit.

#### CERTIFICATE

The undersigned, being the duly elected President and Secretary of Enclave of Naples Condominium Association, Inc. hereby certify that the foregoing were duly

proposed by the Board of Directors and that the foregoing were approved by a vote of members present in person or by proxy and voting at a meeting held on May 19, 2022, 2022, in accordance with the requirements of the Second Amended and Restated Articles of Incorporation for their amendment. The foregoing both amend and restate the Articles of Incorporation in their entirety.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

ENCLAVE OF NAPLES CONDOMINIUM ASSOCIATION, INC.  
A Florida not-for-profit corporation

By: L. Harrison Bernbaum  
Print Name: \_\_\_\_\_  
As President

Attest: Charlene Barnett  
Print Name: CHARLENE BARNETTE  
As Secretary

STATE OF Illinois  
COUNTY OF Lake

The foregoing instrument was acknowledged before me on this 25<sup>th</sup> day of May, 2022 by means of  physical presence or  online notarization by L. Harrison Bernbaum, President of Enclave of Naples Condominium Association, Inc. who is personally known to me or who has produced driver's license (type of identification) as identification.



[Signature]  
Notary Public  
Print Name: Yasemin Hwaderu  
My commission expires: 12/14/2025

STATE OF FL  
COUNTY OF Collier

The foregoing instrument was acknowledged before me on this 26 day of May, 2022 by means of  physical presence or  online notarization by Charlene Barnett, Secretary of Enclave of Naples Condominium Association, Inc., who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification.



(SEAL)

[Signature]  
Notary Public  
Print Name: ADRIENNE DOANE  
My commission expires: 8/11/26

INDEX TO  
THIRD AMENDED AND RESTATED BYLAWS OF  
ENCLAVE OF NAPLES CONDOMINIUM ASSOCIATION, INC.

1.	IDENTITY .....	Page 1
1.1	Principal Office .....	1
1.2	Calendar Year .....	1
1.3	Definitions .....	1
2.	MEETINGS OF MEMBERS AND VOTING .....	1
2.1	Annual Meeting .....	1
2.2	Special Meetings .....	1
2.3	Notice of Annual and Special Meetings .....	2
2.4	Notice of Budget Meeting .....	2
2.5	Member Request for Reconsideration of Budget Under Certain Circumstances .....	2
2.6	Notice of Meeting to Consider Recall of Board Members .....	2
2.7	Notice of Meeting to Elect Directors .....	3
2.8	Quorum .....	3
2.9	Voting .....	3
2.10	Membership: Designation of Voting Members .....	3
2.11	Proxies; Powers of Attorney .....	4
2.12	Adjourned Meetings .....	5
2.13	Waiver of Notice .....	5
2.14	Minutes of Meetings .....	5
2.15	Order of Business .....	5
2.16	Actions Specifically Requiring Unit Owner Approval .....	5
2.17	Voting Rights .....	6
2.18	Parliamentary Rules .....	6
2.19	Electronic Notice .....	6
3.	DIRECTORS .....	6
3.1	Number and Qualifications .....	6
3.2	Election of Directors .....	7
3.3	Term .....	8
3.4	Vacancies .....	8
3.5	Removal .....	8
3.6	Disqualification and Resignation .....	8
3.7	Organizational Meeting .....	8
3.8	Regular Meetings .....	9
3.9	Special Meetings .....	9
3.10	Waiver of Notice .....	9
3.11	Quorum .....	9

3.12	Adjourned Meetings.....	9
3.13	Proxy.....	9
3.14	Presumed Assent.....	10
3.15	Joinder in Meeting by Approval of Minutes.....	10
3.16	Attendance by Conference Telephone or Real-Time Electronic Communication.....	10
3.17	Meetings Open to Members .....	10
3.18	Presiding Officer.....	10
3.19	Minutes of Meetings .....	10
3.20	Compensation.....	10
3.21	Order of Business .....	11
3.22	E-Mail Communication.....	11
3.23	Additional Meeting Notices on Website.....	11
4.	POWERS AND DUTIES OF THE BOARD OF DIRECTORS .....	11
4.1	Maintenance, Management and Operation of the Condominium Property and Condominium Association .....	11
4.2	Contract or Sue.....	11
4.3	Right of Access to Units.....	11
4.4	Make and Collect Assessments.....	12
4.5	Lease, Maintain, Improve, Repair and Replace the Common Elements .....	12
4.6	Lien and Foreclose for Unpaid Assessments .....	12
4.7	Purchase Unit .....	12
4.8	Adopt Rules and Regulations.....	12
4.9	Maintain Official Records .....	12
4.10	Obtain Insurance.....	12
4.11	Furnish a Financial Report to Members.....	12
4.12	Give Notice of Liability Exposure.....	12
4.13	Provide Certificate of Unpaid Assessment.....	12
4.14	Pay the Annual Fee to the Division of Florida Land Sales, Condominiums, and Mobile Homes for Each Residential Unit Operated by the Condominium Association .....	13
4.15	Approve or Disapprove Unit Transfer and Impose Fee.....	13
4.16	Contract for Operation, Maintenance and Management Of the Condominium Association and Condominium Property .....	13
4.17	Pay Taxes or Assessments Against the Common Elements .....	13
4.18	Suspend Approval for Delinquent Unit Owner .....	13
4.19	Authorize Private Use of the Common Elements.....	13
4.20	Repair or Reconstruct Improvements After Casualties .....	13
4.21	Committees.....	13
4.22	Impose Fines.....	14
4.23	Borrow Money .....	14
4.24	Emergency Powers .....	14
5.	OFFICERS .....	16
5.1	Executive Officers.....	16

5.2	President.....	16
5.3	Vice President.....	16
5.4	Secretary.....	16
5.5	Treasurer.....	16
5.6	Subordinate Officers.....	17
5.7	Compensation.....	17
6.	FISCAL MANAGEMENT.....	17
6.1	Board Adoption of Budget.....	17
6.2	Budget Requirements.....	17
6.3	Accounting Records and Reports.....	18
6.3.1	Records Open to Inspection.....	18
6.3.2	Distribution of Financial Reports.....	18
6.4	Depository.....	19
7.	ASSESSMENTS AND COLLECTION.....	19
7.1	Assessments, Generally.....	19
7.2	Special Assessments.....	19
7.3	Charges for Other Than Common Expenses.....	19
7.4	Liability for Assessments.....	20
7.5	Assessments: Amended Budget.....	20
7.6	Collection: Suit. Notice.....	20
7.7	Suspended Use Rights.....	20
7.8	Rent Collection.....	21
8.	ASSOCIATION CONTRACTS, GENERALLY.....	21
8.1	Fair and Reasonable.....	21
8.2	Requirements for Maintenance and Management Contracts.....	21
9.	CONDOMINIUM ASSOCIATION OFFICIAL RECORDS.....	21
10.	ARBITRATION OF INTERNAL DISPUTES.....	23
11.	RULES AND REGULATIONS.....	23
11.1	Board May Adopt.....	23
11.2	Posting and Furnishing Copies.....	24
11.3	Limitations on Authority.....	24
11.4	Reasonableness Test.....	24
12.	BYLAWS DEEMED AMENDED.....	24
13.	INDEMNIFICATION.....	24
14.	AMENDMENTS.....	24
14.1	Proposal.....	24
14.2	Procedure.....	25
14.3	Vote Required.....	25

Page No.

14.4	Limitation.....	25
14.5	Certificate Recording .....	25
15.	MISCELLANEOUS .....	25
15.1	Plural/Gender.....	25
15.2	Severability .....	25
15.3	Governance and Operation .....	25
15.4	Conflict of Governance Documentation .....	25

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THIRD AMENDED AND RESTATED BYLAWS  
OF  
ENCLAVE OF NAPLES CONDOMINIUM ASSOCIATION, INC.

1. **IDENTITY**: These are the Third Amended and Restated Bylaws of Enclave of Naples Condominium Association, Inc., a not-for-profit corporation under the laws of Florida (the "Condominium Association"), organized for the purpose of operating Enclave of Naples, a Condominium (the "Condominium").

1.1 **Principal Office**. The principal office of the Condominium Association shall be the address as reflected on the website of the Florida Secretary of State's office at [www.sunbiz.org](http://www.sunbiz.org) or at such other place as may be designated by the Board of Directors from time to time.

1.2 **Calendar Year**. The Condominium Association shall operate on a calendar year, provided the Board is authorized to change the operation from a calendar year to a different fiscal year whenever the Board deems it in the best interests of the Condominium Association.

1.3 **Definitions**. For convenience, these Third Amended and Restated Bylaws may be referred to as the "Bylaws"; the Third Amended and Restated Articles of Incorporation of the Association as the "Articles"; and the Third Amended and Restated Declaration of Condominium for the Condominium as the "Declaration." The other terms used in these Bylaws shall have the same definitions and meaning as those set forth in Florida Statutes Chapter 718, The Condominium Act, as amended, or by any successor statute, as well as those set forth in the Declaration and the Articles, unless provided to the contrary in these Bylaws, or unless the context otherwise requires.

2. **MEETINGS OF MEMBERS AND VOTING**:

2.1 **Annual Meeting**. The annual meeting of the members shall be held each year in Collier County, Florida, on a date and place and time determined by the Board of Directors from time to time. The purpose of the meeting shall be to elect Directors and to transact any other business authorized to be transacted by the members.

2.2 **Special Meetings**. Special meetings may be called by the President or by a majority of the Board and must be called by the President or Secretary on receipt of a written request from at least fifty percent (50%) of the Voting Interests of the

Condominium Association, unless a lesser number is required by law. Requests for a meeting by the members shall state the purpose for the meeting and business conducted at any special meeting shall be limited to the matters stated in the meeting notice.

**2.3 Notice of Annual and Special Meetings.** Written notice of the annual meeting and any special meeting shall be hand-delivered, mailed or electronically delivered to each unit owner at least fourteen (14) days and not more than sixty (60) days before the meeting. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail addressed to the unit owner at the address as it appears in the records of the Condominium Association, with postage prepaid. If a unit is owned by more than one unit owner, notice shall be to the address which one or more of the unit owners provide to the Condominium Association or, if none is provided, to the address provided on the deed of record. A copy of the notice shall be posted at least fourteen (14) days before the meeting in a conspicuous place designated by the Board on the Condominium Property. An officer of the Condominium Association shall provide an Affidavit, to be included in the official records of the Condominium Association, affirming that notices of the Condominium Association were hand-delivered, mailed or electronically delivered to each unit owner. Individual unit owners may waive notice of the meeting in writing.

**2.4 Notice of Budget Meeting.** The Board shall mail a notice and a copy of the proposed annual budget to the unit owners not less than fourteen (14) days before the meeting at which the Board will consider the budget.

**2.5 Member Request for Reconsideration of Budget Under Certain Circumstances.** If a budget adopted by the Board requires assessment against the unit owners in any fiscal year exceeding one hundred fifteen percent (115%) of the assessment for the previous year, the Board shall conduct a special meeting of the unit owners to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all Voting Interests. The special meeting shall be called on not less than fourteen (14) days written notice to each unit owner, but in no event later than sixty (60) days after the adoption of the annual budget. At the special meeting, unit owners shall consider and may enact a budget by not less than a majority of all Voting Interests. If at the special meeting, a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the Board shall go into effect as scheduled. In determining whether the budget adopted by the Board exceeds one hundred fifteen percent (115%) of the assessment for the previous year, provisions for reasonable reserves for repair or replacement of the Condominium property, nonrecurring expenses and assessments for betterment to the Condominium property shall be excluded, as well as any other items which may be lawfully excluded in accordance with Florida law.

**2.6 Notice of Meeting To Consider Recall of Board Members.** A special meeting of the unit owners to recall a member or members of the Board may be called by ten percent (10%) of the Voting Interests giving notice of the meeting as required for a meeting of unit owners, stating the purpose of the meeting. The meeting shall be held not less than fourteen (14) days nor more than sixty (60) days from the date the notice of



the meeting is given. Electronic transmission may not be used as a method of giving notice of any meeting called in whole or in part for this purpose. An affirmative vote of a majority of the Voting Interests must be obtained in order for a Board member to be recalled. If a recall is determined to be valid on the face of the document itself, then the recall of the Board member(s) is effective immediately upon the conclusion of the Board meeting. A unit owner or unit owner's representative may challenge the Board's determination of a recall's facial validity. A Board member who is successful in challenging a recall is entitled to recover reasonable attorneys' fees and costs from the respondents in the Petition filed with the Division of Condominiums. The Arbitrator of a Petition filed with the Division of Condominiums challenging a recall may award reasonable attorneys' fees and costs to the respondents if they prevail, if the Arbitrator makes a finding that the Petitioner's claim is frivolous.

**2.7 Notice of Meeting To Elect Directors.** The first notice of a meeting to elect Directors from unit owners shall be given no less than sixty (60) days before the scheduled meeting via hand-delivery, mailing, or electronic transmission. Any unit owner or other eligible person desiring to be a candidate for the Board must give written notice to the Condominium Association not less than forty (40) days before the scheduled election. The Condominium Association shall deliver via hand-delivery, mail or electronic delivery a second notice of election no less than fourteen (14) days prior to the meeting, together with a ballot listing all candidates in alphabetical order, together with any candidate information sheets timely provided. In the event no quorum is attained at a meeting at which an election is to take place, the election shall proceed, regardless of the lack of quorum, provided at least twenty percent (20%) of the eligible voters cast a valid ballot; in this event, the election shall be decided by plurality of those votes cast. No other business may be conducted in the absence of a quorum, other than the election being held. Proxies shall not be permitted for voting for Directors.

**2.8 Quorum.** A quorum at meetings of members shall consist of Voting Interests either in person or by proxy, representing a majority of the Voting Interests of the entire membership.

**2.9 Voting.**

(A). **Number of Votes.** In any meeting of members each unit shall have one Voting Interest. The vote of a unit is not divisible.

(B). **Majority Vote.** The acts approved by a majority of the Voting Interests present in person or by proxy at a meeting at which a quorum is present shall be binding on all unit owners for all purposes unless the Condominium Act, the Third Amended and Restated Declaration, Third Amended and Restated Articles, or Third Amended and Restated Bylaws require a larger percentage, in which case that larger percentage shall control.

**2.10 Membership; Designation of Voting Members.** Persons or entities shall become members of the Condominium Association on the acquisition of fee title to a unit in the Condominium after approval of the acquisition in the manner provided in the

Declaration. Membership shall be terminated when a person or entity no longer owns a unit in the Condominium. If a unit is owned by more than one natural person, or a corporation, partnership or other artificial entity, then the Voting Interest of the unit shall be exercised by a natural person named in a voting certificate signed by: all the natural persons who are owners; by the President or Vice President of a corporation; Trustee of a trust; a general partner of a partnership; the chief executive officer of an artificial entity; by the Personal Representative of an Estate; or by the holder of a Power of Attorney. Voting Certificate holders are subject to the following restrictions:

- (A) Corporations or Limited Liability Companies: The designated voter must be an officer, director or shareholder of the company.
- (B) Trusts: A trustee(s) of the trust(s) or the occupant where the occupant is the grantor and/or beneficiary must be the designated voter.
- (C) Estates: The designated voter must be the Personal Representative of a beneficiary of the estate.

**2.11 Proxies; Powers of Attorney.** Except for the purposes of electing members of the Board, Voting Interests may be exercised in person or by proxy. General proxies may be used by unit owners at unit owner meetings to establish quorums, for procedural votes, and for non-substantive items for which a limited proxy is not otherwise required. At unit owner meetings, unit owners may vote with limited proxies for votes taken to waive or reduce the funding of reserves, provided the proxy contains the following statement mandated by Fla. Stat. 718 in bold print, capitalized letters, in one font size larger than any other used on the face of the proxy: **WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.** Unit owners may also vote with limited proxies on financial statement requirements, to amend the Condominium Documents, and for all other substantive matters for which the Condominium Act requires. Each proxy shall set forth specifically the name of the person voting by proxy, the name of the person authorized to vote the proxy for him, and the date the proxy was given. All proxies shall be signed in the same manner as a voting certificate, unless a voting certificate is on file with the Secretary of the Condominium Association or management, or any third-party designee. Each proxy shall contain the date, time and place of the meeting for which the proxy is given. If the proxy is a limited proxy, it shall set forth those items that the holder of the proxy may vote and the manner in which the vote is to be cast. The proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given, and it may be revoked at any time at the pleasure of the unit owner executing it. The proxy shall be signed by the unit owner or by the designated person mentioned in Article 2.10. If the proxy expressly provides, any proxy holder may appoint in writing a substitute to act in his place. If no such provision is made, substitution is not authorized.

**2.12 Adjourned Meetings.** If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present; except that in the cases where meetings have been called to consider the enactment of a budget to replace a proposed budget which exceeds one hundred fifteen percent (115%) of the assessments for the preceding year, or to determine to provide no reserves or reserves less adequate than required, they may not be adjourned for lack of a quorum and if a quorum is not present, the excessive budget, or the reserves as the case may be, shall go into effect as scheduled. The time and place to which the meeting is adjourned shall be announced at the meeting at which the adjournment is taken and a notice shall be posted in a conspicuous place on the Condominium property as soon thereafter as may be practical stating the time and place to which the meeting is adjourned.

**2.13 Waiver of Notice.** Unit owners may waive their right to receive notice of any meeting, whether annual or special, by a writing signed by them to that effect. The waiver shall be filed with the Secretary of the Condominium Association either before, at or after the meeting for which the waiver is given.

**2.14 Minutes of Meetings.** Minutes of all meetings of unit owners shall be kept in perpetuity by the Condominium Association as part of its official records. All unit owners shall have the right to inspect the minutes and the right to make or obtain copies at the reasonable expense, if any, of the unit owner.

**2.15 Order of Business.** The order of business at annual meetings of members and as far as practical at other members' meetings, shall be:

- A. Collection of all Ballots (in the event of an election)
- B. Call to Order
- C. Determination of Quorum
- D. Commencement of Tabulation of Votes (in the event of an election)
- E. Certification of Proper Notice of Meeting
- F. Consideration of prior Minutes
- G. Report of Officers
- H. Report of Committees
- I. Owner Comments
- J. Unfinished Business
- K. New Business
- L. Announcement of Results of Election (if applicable)
- M. Adjournment

**2.16 Actions Specifically Requiring Unit Owner Approval.** The following actions require approval by the unit owners and may not be taken by the Board acting alone:

- A. Amendments to the Declaration unless otherwise provided specifically in the Declaration.

- B. Providing no reserves or less than adequate reserves.
- C. Recall of members of the Board.
- D. Other matters contained in the Third Amended and Restated Declaration, the Third Amended and Restated Articles, and these Third Amended and Restated Bylaws that specifically require a vote of the members, such as material alterations or substantial additions to the common elements unless exempted by the Third Amended and Restated Declaration of Condominium.

2.17 Voting Rights. Voting rights of any unit owner who is more than ninety (90) days delinquent in payment of more than \$1,000.00 of any fee, fine, or other monetary obligation may be suspended by the Board of Directors. Proof of such obligation must be provided to the unit owner or member thirty (30) days before such suspension takes place.

2.18 Parliamentary Rules. Roberts' Rules of Order shall govern the conduct of Condominium Association meetings unless in conflict with the Florida Statutes as applicable to condominiums, the Third Amended and Restated Declaration, or with these Third Amended and Restated Bylaws, in which case the latter shall control. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final.

2.19 Electronic Notice. Notice of meetings of the board of directors, unit owner meetings, except unit owner meetings called to recall board members, and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the Condominium Association in the course of giving electronic notices.

### 3. DIRECTORS:

3.1 Number and Qualifications. The affairs of the Condominium Association shall be managed by a Board of five (5) Directors. The following restrictions apply:

- A. Directors must be either a unit owner or a Primary Occupant or a spouse of a unit owner or Primary Occupant, the settlor or grantor of a trust which owns a Unit or the spouse of such party, a beneficiary of such a Trust provided said beneficiary occupies the Unit, or the spouse of such party.

- B. Co-owners of a unit may not serve as members of the Board at the same time unless they own more than one unit.
- C. In the event the unit is not owned by individual(s), only the designated "Primary Occupant" as defined in the Declaration, or the Primary Occupant's spouse may serve as a Director. For the purposes of this section, the trustee of a trust which owns a unit or the occupant of a unit owned by a trust where the occupant is also the grantor and/or beneficiary of the trust, or partners of a partnership are deemed to be the unit owner.
- D. No Director shall continue to serve on the Board after he ceases to be unit owner or the entity or person through which he was previously qualified to serve is no longer a unit owner in the Condominium.
- E. Any Director or Officer delinquent in payment of any monetary obligation for more than ninety (90) days shall be deemed to have abandoned the office, creating a vacancy to be filled, no unit owner who is delinquent in assessments is eligible for the Board.
- F. No individual suspended or removed by the Division of Florida Condominiums is eligible for the Board.

3.2 Election of Directors. Directors shall be elected at the annual meeting of the members by a plurality of the Voting Interests. Each member shall be entitled to cast votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. Not less than sixty (60) days before the annual meeting of the members, the first notice of election must be sent, inviting unit owners to submit their names for candidacy. Any unit owner or other eligible person desiring to be a candidate for the Board must notify the Condominium Association in writing of his intent no less than forty (40) days before the scheduled election. Each Director must sign a form attesting, to the best of his or her ability, within ninety (90) days of having been elected, that the Director has read and understands the Condominium governing documents, the Condominium Act, and the applicable rules of the Divisions of Florida Condominiums, Timeshares, and Mobile Homes, or in the alternative, complete a course approved by the Florida Division of Condominiums for Directors and file a Certificate of Completion of the course with the Association Secretary. A second notice of election, together with the ballot, shall be mailed not less than fourteen (14) days prior to the scheduled election. All ballots shall be sealed. No nominations from the floor are permitted. Upon timely request of a candidate, the Association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, furnished by the candidate, with the mailing of the ballots, with the costs of mailing and copying to be borne by the Condominium Association. In the event of a tie, a runoff election shall be held. Notice of the runoff election must be sent within seven (7) days of the election at which the tie occurred, and the meeting held no less than twenty-one (21) days nor more than thirty (30) days after the date of the election at which the tie vote occurred. In the event the number of vacancies equals or is greater than the number of candidates that submit a notice of intent to run for the Board

of Directors, no election shall be necessary and all individuals submitting their names shall be automatically on the Board of Directors as of the conclusion of the Annual Meeting. Should the number of individuals that submit their name for candidacy be less than the number of vacancies, the newly seated Board of Directors may appoint individual(s) to fill the vacancies at a duly noticed meeting. The results of an election shall be announced at the meeting at which the election is held; the names of each candidate and the number of votes each candidate receives in an election shall be announced at the meeting at which the election is held.

It is the intention of this Article to 'opt out' of the statutory election procedures found at Section 718.112(2)(d), Florida Statutes; to this end the Board may establish additional election rules as it deems appropriate to ensure a fair election process. Substantial compliance with these Bylaws relative to election procedures is sufficient.

**3.3 Term.** Each Director's term of service shall be for two years. Terms shall be staggered. Each Director shall serve until his successor is duly elected or appointed and qualified or until he is removed in the manner provided in 3.5; retiring Board members shall serve through the annual meeting at which their successors are elected.

**3.4 Vacancies.** Except as to vacancies resulting from removal of Directors by members, vacancies in the Board occurring between annual meetings of members shall be filled by majority vote of the remaining Directors. Any Director appointed to fill a vacancy shall hold office for the balance of the length of the term. The Board may elect not to fill a vacancy for any remaining period of a term that becomes vacant in between annual meetings.

**3.5 Removal.** Any Director may be recalled and removed from office with or without cause by the vote or agreement in writing of a majority of all Voting Interests. A special meeting of the unit owners to recall a member or members of the Board may be called by ten percent (10%) of the Voting Interests giving notice of the meeting as required in these Bylaws. The notice shall state the purpose of the meeting. Any vacancy on the Board thus created shall be filled by the members of the Condominium Association at the same meeting. If more than one Director is subject to recall, there shall be a separate vote on the question to remove each Director. Reference should be made to the specific provisions of the Condominium Act contained in Section 718.112, in the case of recall by an agreement in writing or a disputed recall.

**3.6 Disqualification and Resignation.** Any Director may resign at any time by sending or personally delivering a written notice of resignation to the Condominium Association, addressed to the President or Secretary. The resignation shall take effect on receipt by the Secretary, unless it states differently.

**3.7 Organizational Meeting.** The organizational meeting of a newly elected Board shall be held immediately upon adjournment of the meeting at which they were elected, provided a quorum shall then be present, or as soon thereafter as may be practical in the event a quorum is not obtainable. The annual meeting of the Board of Directors shall be held at the same place as the general members annual meeting.

3.8 **Regular Meetings.** The Board may establish a schedule of regular meetings to be held at a time and place as two of them shall determine from time to time. Notice of regular meetings, however, shall be given to each Director personally or by mail, telephone or electronic transmission at least forty-eight (48) hours before the scheduled time named for the meeting with the notice of each meeting posted conspicuously on the Condominium property at least forty-eight (48) hours before the meeting, except in an emergency. Notice of any Board meeting where rules that may affect a unit owner's use of his unit are to be considered shall be mailed or delivered to the unit owners and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. If twenty percent (20%) of the Voting Interests petition the Board to address an item of business, the Board shall, at its next regular Board meeting or at a special meeting, but not later than sixty (60) days after receipt of the petition, place the item on the Board agenda.

3.9 **Special Meetings.** Special meetings of the Board may be called by the President and, in his absence, by the Vice President, and must be called by the Secretary at the written request of two (2) of the Directors. Notice of the meeting shall be given via hand-delivery, mail, telephone or via electronic transmission. The notice shall state the time, place and purpose of the meeting and shall be transmitted not less than forty-eight (48) hours before the meeting. A copy of the notice of any special meeting shall be posted conspicuously on the Condominium property at least forty-eight (48) hours before the meeting, except in an emergency.

3.10 **Waiver of Notice.** Any Director may waive notice of a meeting before, at or after the meeting and that waiver shall be deemed equivalent to the giving of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of the meeting, except when his attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

3.11 **Quorum.** A quorum at the meetings of the Directors shall consist of a majority of the entire Board. The acts approved by a majority of those present in person or electronically at a meeting at which a quorum is present shall constitute the acts of the Board, except when approval by a greater number of Directors is required by the Declaration, the Articles or these Bylaws.

3.12 **Adjourned Meetings.** If there is less than a quorum present at any meeting of the Board, the majority of those present may adjourn the meeting until a quorum is present. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice when the meeting is reconvened.

3.13 **Proxy.** No member of the Board may vote by proxy at any meeting of the Board.

3.14 Presumed Assent. A Director present at any Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless he or she votes against such action or abstains from voting because of an asserted conflict of interest; the nature of any asserted conflict of interest by a Director shall be detailed by that Director to the Board prior to the vote.

3.15 Joinder in Meeting by Approval of Minutes. A Director may join in the action of a meeting by signing and concurring in the minutes of that meeting. That concurrence, however, shall not constitute the presence of that Director for the purpose of determining a quorum.

3.16 Attendance by Conference Telephone or Real-Time Electronic Communication. When telephone conference or other real-time electronic communication is used, a speaker shall be activated so that the discussion may be heard by the Board members and by any unit owners present in an open meeting. Real-time videoconferencing or similar real-time electronic or video communication by a Board member, in lieu of physical appearance, is permitted. Board members utilizing telephone conference calls or other real-time electronic or video communication may be counted toward obtaining a quorum and may vote over the telephone.

3.17 Meetings Open to Members. Meetings of the Board shall be open to all unit owners to attend and observe. Unit owners shall be entitled to participate in the meeting at such point in the meeting as is designated by the Board; unless otherwise provided by the Board, each unit owner is entitled to speak for three minutes with reference to designated agenda items. Notice of any meeting in which special assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and set out the nature of the assessments. Prior written notice of such meeting shall be mailed to each unit owner at least fourteen (14) days prior to the scheduled meeting. Unit owners may be excluded from a meeting of the Board of Directors when the Condominium Association's attorney is present for purposes of providing legal advice concerning proposed or pending litigation or from a meeting, the purpose of which is to discuss personnel matters. Such meetings although closed to unit owners, must still be properly noticed in the same manner as all other meetings of the Board.

3.18 Presiding Officer. The presiding officer at Board meetings shall be the President or, in his absence, the Vice President, and, in his absence, the Directors present shall designate any one of their number to preside.

3.19 Minutes of Meetings. The minutes of all meetings of the Board shall be kept in the same manner as the minutes of meetings of unit owners. Unit owners shall have the same rights as to inspection and copying as detailed in Article 9.

3.20 Compensation. Directors shall serve without pay but shall be entitled solely to reimbursement for documented out-of-pocket expenses reasonably incurred in the discharge of their duties, unless otherwise approved by the Condominium Association.



3.21 Order of Business. The order of business at meetings of Directors shall be:

- A. Calling of Roll
- B. Proof of notice of meeting or waiver of notice
- C. Reading and disposal of any unapproved minutes
- D. Reports of Officers
- E. Report of Manager
- F. Reports of Committees
- G. Unfinished Business
- H. New Business
- I. Owners Comments
- J. Adjournment

3.22 E-Mail Communication. Communication by Board members via e-mail shall be permitted; however, Board members cannot vote via e-mail.

3.23 Additional Meeting Notices on Website. In addition to any of the authorized means of providing notice of a meeting of the Board, the Association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the Condominium Association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the Condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the Condominium Association send an electronic notice in the same manner as a notice for a meeting of the members.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS: All of the powers and duties of the Condominium Association existing under the Condominium Act, the Third Amended and Restated Declaration, the Third Amended and Restated Articles and these Third Amended and Restated Bylaws shall be exercised exclusively by the Board, or its duly authorized agents, contractors or employees, subject only to the approval by unit owners when that approval is specifically required. The powers and duties of the Board shall include, but shall not be limited to, the following:

4.1 Maintenance, Management and Operation of the Condominium Property and Condominium Association.

4.2 Contract or Sue. The Condominium Association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest, including but not limited to the Common Elements and commonly used facilities.

4.3 Right of Access to Units. The Condominium Association has the irrevocable right of access to each unit during reasonable hours as necessary for the maintenance, repair, or replacement of any Common Elements or for making emergency repairs necessary to prevent damage to the Common Elements or to another unit or

units, for periodic insect spraying and inspections, and to otherwise secure property in the event of an approaching storm.

4.4 Make and Collect Assessments.

4.5 Maintain, Improve, Repair and Replace the Common Elements.

4.6 Lien and Foreclose for Unpaid Assessments. The Condominium Association has lien rights on each Condominium parcel for any unpaid assessments with interest and for reasonable attorneys' fees incurred in the collection of the assessment or enforcement of the lien. It also has the power to purchase the Condominium parcel at the foreclosure sale and to hold, mortgage or convey it.

4.7 Purchase Unit. In addition to its right to purchase a Condominium parcel at a lien foreclosure sale, which may be exercised solely by the Board of Directors without the requirement of a unit owner vote, the Condominium Association generally has the power to purchase a Condominium parcel in the Condominium and to acquire, hold, mortgage and convey them, provided, however, prior approval of a majority of all unit owners shall be required to acquire a unit in any other manner than purchase at a lien foreclosure sale. No Board member or manager or management company may purchase a Condominium parcel at a foreclosure sale resulting from the Condominium Association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

4.8 Adopt Rules and Regulations. The Condominium Association, through its Board, may from time to time, promulgate such rules and regulations with respect to the Condominium property as it determines to be in the best interests of the unit owners and the Condominium Association.

4.9 Maintain Official Records. The Condominium Association shall maintain all of the records, where applicable, which shall constitute the official records of the Association, as detailed in Article 9 contained herein.

4.10 Obtain Insurance. The Condominium Association shall use its best efforts to obtain and maintain adequate insurance to protect the Condominium Association, the Condominium Association Property and the Condominium Property.

4.11 Furnish a Financial Report to Members.

4.12 Give Notice of Liability Exposure. If the Condominium Association may be exposed to liability in excess of insurance coverage in any legal action, it shall give notice of the exposure to all unit owners, who shall have the right to intervene and defend.

4.13 Provide Certificate of Unpaid Assessment. Any unit owner or mortgagee has the right to request from the Condominium Association a certificate stating all assessments and other monies owed to the Condominium Association with respect to the Condominium parcel.

4.14 Pay the Annual Fee to the Division of Florida Land Sales, Condominiums, and Mobile Homes for Each Residential Unit Operated by the Condominium Association.

4.15 Approve or Disapprove Unit Transfer and Impose Fee. The Condominium Association may charge a fee of up to the maximum amount permissible under Florida law in connection with the approval or disapproval of any proposed sale, or other transfer of a unit, as well as for preparation of the Certificate of Transfer, provided the amount of the fee is included in the Certificate.

4.16 Contract for Operation, Maintenance and Management of the Condominium Association and Condominium Property. This power shall include, but not be limited to, the power to enter into bulk contracts for cable, internet and other technological services. The Condominium Association may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, provided, however, this prohibition shall not apply if the service provider in which the board member or officer, or relative thereof within the third degree of consanguinity by blood or marriage owns less than one (1) percent of the shares.

4.17 Pay Taxes or Assessments Against the Common Elements.

4.18 Authorize Private Use of the Common Elements. The Board may authorize unit owners or others to use portions of the common elements, such as social rooms and meeting rooms, for private parties and gatherings. Reasonable charges may be imposed provided a registration form is completed and/or a lease is entered into between the Association and the unit owner.

4.19 Repair or Reconstruct Improvements After Casualties.

4.20 Committees. The Board may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. The President may, without Board resolution, appoint from time to time such standing or temporary committees as he deems necessary, provided no such committee appointed by the President shall have any powers delegated to it other than to report to the Board unless subsequently ratified by the Board. The President, acting alone, may appoint committee members or may elect to appoint a committee chairperson, who shall then appoint his or her committee members. All committees are advisory in nature unless the resolution establishing the committee delegates other authority to the committee.

4.21 Impose Fines. The Board may impose fines on unit owners, a unit owner's licensee and/or invitee in such reasonable sums as they may deem appropriate, up to the maximum amount permissible under Florida law for violations of the Declaration, the Articles, these Bylaws or lawfully adopted rules and regulations, by Owners or their

guests. A fine or suspension levied by the Board may not be imposed unless the Board first provides at least fourteen (14) days' written notice to the unit owner and, if applicable, any occupant, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the Board who are not officers, directors, or employees of the Condominium Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due five (5) days after notice of an approved fine is provided to the unit owner and, if applicable, to any licensee, or invitee of the unit owner. The Condominium Association must provide written notice of such fine or suspension by mail or hand-delivery to the unit owner and, if applicable, to any licensee, or invitee of the unit owner.

4.22 **Borrow Money.** Borrow money upon such terms and conditions as the Board deems appropriate, including the authority to enter into a conditional assignment of accounts receivable as collateral for any such loan, provided, however, prior approval of a majority of all unit owners shall be required to borrow money for any purpose other than for financing insurance premiums, or for maintenance, repairs or replacement of the common elements or any portion of the building the Condominium Association is obligated to insure.

4.23 **Emergency Powers.** The Board shall have the following emergency powers in response to any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property caused by an event for which a state of emergency is declared in Collier County, Florida, or is anticipated to be a declared state of emergency in Collier County Florida, provided such powers are limited to the time reasonably necessary to protect the health, safety and welfare of the Condominium Association and the unit owners and their family members, guests, agents, or invitees and are reasonably necessary to mitigate further damage and make emergency repairs:

(A) Conduct Board and membership meetings with notice given as practicable, given in any manner the Board deems reasonable under the circumstances, and conduct Board meetings, committee meetings, membership meetings and elections, in whole or in part by telephone, real-time conferencing, or similar real-time electronic or video communication; and

(B) Cancel and reschedule any Condominium Association meetings; and

(C) Name as assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the Association; and

(D) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal; and

(E) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer or security systems; or air conditioners.

(F) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine any portion of the Condominium property unavailable for entry or occupancy by unit owners, family members, guests, agents, or invitees to protect the health, safety or welfare of such persons.

(G) Require the evacuation of the Condominium property in the event of a mandatory evacuation order for Naples, Florida.

(H) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine whether the Condominium property can be safely inhabited or occupied.

(I) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus and/or mold by removing and disposing of wet drywall, insulation, carpet, cabinetry or other fixtures on or within the Condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(J) Contract on behalf of any unit owner for items or services for which the owners are otherwise individually responsible for, but which are necessary to prevent further damage to the Condominium property. In such event, the unit owner or owners on whose behalf the Board has contracted are responsible for reimbursing the Condominium Association for the actual costs of the items or services, and the Condominium Association may use its lien authority to enforce collection of the charges.

(K) Levy special assessments without a vote of the owners, regardless of any provision to the contrary.

The Board may not prohibit unit owners, guests agent or invitees of a unit owner from accessing the Unit and the common elements and limited common elements for the purposes of ingress and egress to and from the Unit, provided, however, the Board may deny access based upon a governmental order or determination or a public health directive from the Centers for Disease Control and Prevention, prohibiting access to a Unit. Any access is subject to reasonable restrictions adopted by the Board.

5. OFFICERS:

5.1 Executive Officers. The executive officers of the Condominium Association shall be a President, who shall be a Director; a Vice President, who shall be a Director; a Treasurer and a Secretary. The officers shall be elected annually by the Board and may be removed without cause at any meeting by a vote of a majority of all of the Directors. A person may hold more than one office except that the President may not also be the Secretary. No person shall sign an instrument nor perform an act in the capacity of more than one office. The Board, from time to time, may elect other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Condominium Association.

5.2 President. The President shall be the chief executive officer of the Condominium Association. He shall have all of the powers and duties that usually are vested in the office of President of a condominium association, including but not limited to the power to appoint committees from among the members to assist in the conduct of the affairs of the Condominium Association as he, in his discretion, may determine appropriate. He shall preside at all meetings of the Board and the members and shall have the authority to conduct all actions within reasonable rules of procedure.

5.3 Vice President. The Vice President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise those other powers and perform those other duties as shall be prescribed by the Directors.

5.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Condominium Association and shall affix it to instruments requiring the seal when duly signed. He shall keep the records of the Condominium Association, except those of the Treasurer, and shall perform all other duties incident to the office of the Secretary of a condominium association and as may be required by the Directors or the President.

5.5 Treasurer. The Treasurer shall have custody of all property of the Condominium Association, including funds, securities and evidence of indebtedness. He shall keep books of account for the Condominium Association in compliance with generally accepted accounting principles, which, together with substantiating papers, shall be made available to the Board for examination at reasonable times. He shall submit a treasurer's report to the Board at monthly intervals and shall perform all other duties incident to the office of treasurer. All money and other valuable effects shall be kept for the benefit of the Condominium Association in such depositories as may be designated by a majority of the Board. The Treasurer shall be supported by the property management company in accordance with Board directives.

5.6 Subordinate Officers. The Board may appoint such other officers and agents as may be deemed necessary; such other officers and agents are not required to be Board members and shall hold office at the pleasure of the Board and shall have such authority and perform such duties that, from time to time, may be prescribed by said Board.

5.7 Compensation. Officers shall serve without pay but shall be entitled solely to reimbursement for documented out-of-pocket expenses reasonably incurred in the discharge of their duties, unless employed by the Condominium Association.

6. FISCAL MANAGEMENT: The Condominium Association shall operate on a calendar year, unless otherwise altered by the Board in accordance with the Bylaws.

6.1 Board Adoption of Budget. The Board shall adopt a budget for the Common Expenses of the Condominium Association in advance of each fiscal year at a regularly scheduled or special meeting of the Board properly noticed for that purpose at least fifteen (15) days before the end of each fiscal year.

6.2 Budget Requirements. The proposed annual budget of Common Expenses shall be detailed and shall show the amount budgeted by accounts:

- A. Administration of the Condominium Association
- B. Management fees
- C. Maintenance
- D. Taxes
- E. Insurance
- F. Other expenses
- G. Operating capital
- H. Fees payable to the Division of Florida Land Sales, Condominiums, and Mobile Homes
- I. Reserve accounts for capital expenditures and deferred maintenance including, but not limited to, roof replacement, building painting, pavement resurfacing, and storm damage. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. Reserves must be included in the proposed annual budget but may be removed from the final budget if by vote of the majority of the members present at a duly called meeting of the Condominium Association, they shall determine for a fiscal year to provide no reserves or reserves less adequate as required by F.S. 718.112. If a meeting of the unit owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as

included in the budget shall go into effect.

6.3 Accounting Records and Reports. The Condominium Association shall maintain accounting records in the county in which the Condominium is located, according to good accounting practices.

6.3.1 Records Open to Inspection. The records shall be open to inspection by any Condominium Association member or the authorized representative of such member at all reasonable times. The records shall include, but are not limited to:

- A. Accurate, itemized and detailed records of all receipts and expenditures.
- B. A current account and a monthly, bi-monthly or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account and the balance due.
- C. All audits, reviews, accounting statements, and financial reports of the Condominium Association.
- D. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of one year.

6.3.2 Distribution of Financial Reports. Within ninety (90) days after the end of each fiscal year, the Board shall have prepared a financial report of actual receipts and expenditures for the previous twelve (12) months, which shall be mailed or hand-delivered to each unit owner within twenty-one (21) days of completion, but not later than one hundred twenty (120) days after the end of the fiscal year or, in the alternative, notice shall be mailed or hand-delivered to each unit owner that a copy of the report is available and will be mailed or delivered, without charge, within five (5) business days after receipt of a written request. In the event the Association fails to provide a copy of the most recent financial report to an owner who has submitted a written request for it within five (5) business days, and subsequently fails to provide the Florida Department of Business and Professional Regulation (DBPR) with a copy of the report within five (5) business days of DBPR requesting it, the Association may not waive the financial report requirement required under Fla. Stat. 718.111 for the fiscal year in which the unit owner's request was made and the following fiscal year.

6.4 Depository. The depository of the Condominium Association shall be those federally insured banks or savings and loan associations, state or federal, with an office located in Florida, as shall be designated from time to time by the Board and in which the money for the Condominium Association shall be deposited. Withdrawal of money from



those accounts shall be only by checks or other withdrawal instruments signed by those persons as are authorized by the Directors; all checks five thousand dollars (\$5,000.00) and over must be signed by two individuals. The Condominium Association shall maintain insurance and fidelity bonding on all individuals who control or disburse funds of the Condominium Association. The insurance policy and fidelity bond limits shall, at minimum, be equal to the maximum funds that will be in the custody or control of the Condominium Association or its management agent at any one time. The Condominium Association, its officers, directors, employees and agents shall not use a debit card issued in the name of the Association or billed directly to the Condominium Association for the payment of any Association expense. Any bank balance that exceeds the FDIC insured limit is required to be invested in Insured Cash Sweep accounts.

## 7. ASSESSMENTS AND COLLECTION:

7.1 Assessments, Generally. Assessments shall be made against the units not less frequently than quarterly in the discretion of the Board. The assessments shall be made in an amount no less than required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. The assessment funds shall be collected against units in the proportions or percentages provided in the Declaration.

7.2 Special Assessments. The specific purpose or purposes of any special assessment, including emergency assessments, that cannot be paid from the annual assessment for Common Expenses, as determined by the Board, shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The notice shall be sent or delivered within such time before the payment or initial payment there under shall be due, as may be reasonable or practicable in the circumstances. Special assessments shall be paid at the times and in the manner that the Board may require in the notice of the assessment. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. Upon completion of such specific purpose or purposes, any excess funds shall be either returned to the unit owners who own units at the time of the return, or, if not returned, shall be considered Common Surplus.

7.3 Charges for Other Than Common Expenses. Charges by the Condominium Association against individual members for other than Common Expenses shall be payable in advance if for work to be done and the billing and collection thereof may be administered by the Condominium Association, such as bulk air conditioning servicing.

7.4 Liability for Assessments. Each unit owner, regardless of how title is acquired, shall be liable for all assessments coming due while he is the unit owner. The unit owner and his grantee in a voluntary conveyance shall be jointly and severally liable for all unpaid assessments due and payable up to the time of the transfer or title. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise provided by law. The unpaid share of Common Expenses or assessments are Common Expenses

collectible from the unit owners, including such acquirer and his successors and assigns. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Element or by abandonment of the unit for which the assessments are made.

7.5 Assessments: Amended Budget. If the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board. Unpaid assessments for the remaining portion of the year for which an amended assessment is made shall be payable in as many equal installments as there are installment payment dates remaining in the budget year as of the date of the amended assessment. The budget shall not be amended for emergency or special nonrecurring expenses; in those cases, a special assessment shall be levied, or the Board, at its option, may seek to borrow the funds necessary to meet the emergency or nonrecurring expense, if needed.

7.6 Collection: Suit. Notice. The Condominium Association may bring an action to foreclose any lien for assessments in the manner that a mortgage of real property is foreclosed. It also may bring an action to recover a money judgment for the unpaid assessment without waiving any claim of lien. The Condominium Association shall give notice to the unit owner of its intention to file a lien at least thirty (30) days in advance delivered by both U.S. mail and certified mail, and shall further give notice to the unit owner of its intention to foreclose its lien at least forty-five (45) days before the foreclosure action is filed. The notice shall be by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his last known address.

7.7 Suspended Use Rights. The Condominium Association may suspend the use rights for the common elements, facilities, or other Association property if a unit owner is delinquent for more than ninety (90) days in the payment of any monetary obligation. A suspension levied by the Board of Directors may not be imposed unless the Board of Directors first provides at least fourteen (14) days' written notice to the unit owner and, if applicable, any occupant, licensee, or invitee of the unit owner sought to be suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the Condominium Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the suspension levied by the Board of Directors. If the committee does not approve the proposed suspension by majority vote, the suspension may not be imposed. The Condominium Association must provide written notice of such suspension by mail or hand-delivery to the unit owner and, if applicable, to any licensee, or invitee of the unit owner.

## 8. ASSOCIATION CONTRACTS, GENERALLY:

8.1 Fair and Reasonable. All contracts for the operation, maintenance or management of the Condominium Association or property serving the unit owners, made by the Condominium Association, must not be in conflict with the powers and duties of the Condominium Association or the rights of the unit owners.

8.2 Requirements for Maintenance and Management Contracts. Written contracts for operation, maintenance and management entered into by the Condominium Association must contain certain elements in order to be valid and enforceable. These include, but are not limited to:

- A. Specification of the services, obligations and responsibilities of the service provider.
- B. Specification of costs for services performed, and payment terms.
- C. An indication of frequency of performance of services.
- D. Specification of minimum number of personnel to provide the services contracted for, if practical.
- E. Insurance and bonding requirements, warranties, termination provisions and dispute resolution provisions.

Competitive bids must be obtained for all contracts for operation of the Condominium Association and maintenance unless specifically excluded from such a requirement in the Management contract itself.

9. CONDOMINIUM ASSOCIATION OFFICIAL RECORDS: The Condominium Association from its inception, shall maintain each of the following items when applicable, which shall constitute the official records of the Condominium Association.

- A. A copy of the plans, permits, warranties and other items provided by the Developer pursuant to F.S. 718.304(4) of the Act.
- B. A photocopy of the recorded Declaration and all Amendments thereto.
- C. A photocopy of the recorded Bylaws and all amendments thereto.
- D. A certified copy of the Articles of Incorporation and all amendments thereto.
- E. A copy of the current rules of the Condominium Association.
- F. A book or books containing the minutes of all meetings of the Condominium Association, of the Board and of Unit Owners. A current roster of all unit owners, their mailing

addresses, unit identifications, and if known, telephone numbers and e-mail addresses if consent is given by the unit owner. Additionally, the Condominium Association may require a copy of the deed or other instrument showing each unit's ownership, together with a copy of any mortgage on the unit and any satisfaction of that mortgage and voting certificates.

- G. All current insurance policies of the Condominium Association and Condominiums operated by the Condominium Association, as well as such past policies as the Board shall deem appropriate.
- H. A current copy of any management agreement, or other contract to which the Condominium Association is a party or under which the Condominium Association or the unit owners have an obligation or responsibility.
- I. Bills of sale or transfer for all property owned by the Condominium Association.
- J. The accounting records required in 6.3.
- K. Voting proxies, which shall be maintained for a period of one year from the date of the meeting for which the proxy was given.
- L. Electronic records relating to voting.
- M. Copies of bids for work, equipment or services to be performed shall be kept for a period of one year after receipt of the bid.

The official records of the Condominium Association shall be maintained in the county in which the Condominium is located and shall be open to inspection by any Condominium Association member, or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the Condominium Association member. The Association shall allow a member or his or her authorized representative to use a portable device, including smartphone, tablet, portable scanner or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the Association providing the member or his or her authorized representative with a copy; the Association may not charge a member or his or her authorized representative for the use of a portable device.

Failure to permit inspection of the Condominium Association records within ten (10) working days of receipt of the request entitles any person prevailing in an enforcement

action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records for inspection.

Outgoing Board members and Committee members must relinquish all official records and property of the Association in his or her possession or under his or her control to the incoming Board within five (5) days after the election, or within five (5) days after their resignation.

10. **ARBITRATION OF INTERNAL DISPUTES:** If required under Florida law, internal disputes arising from the operation of the Condominium among unit owners, the Condominium Association, their agents and assigns shall be submitted via a petition for Mandatory Non-Binding Arbitration to the Division of Florida Land Sales, Condominiums and Mobile Homes pursuant to F.S. 718.1255 prior to the institution of any court action. This requirement shall not apply to disputes involving the interpretation or enforcement of warranties, title to a unit or to the Common Elements, disagreements concerning the levy or collection of assessments or fines, the alleged breach of a fiduciary duty, or alleged failure of the Condominium Association to maintain the Common Elements or Association property. In the alternative, a party may submit a dispute to the pre-suit mediation process in accordance with Florida Statute Chapter 718.1255(4), and then file in a court of law in the event mediation is not successful.

11. **RULES AND REGULATIONS:**

11.1 **Board May Adopt.** The Condominium Association, through its Board, may from time to time, promulgate such rules and regulations with respect to the Condominium property as it determines to be in the best interests of the unit owners and the Condominium Association.

11.2 **Posting and Furnishing Copies.** A copy of the rules and regulations adopted from time to time by the Board, and any amendments to existing rules and regulations, shall be posted in a conspicuous place on the Condominium property and a copy furnished to each unit owner. No rule, regulation, or amendment shall become effective until 30 days after notice, except in the case of an emergency, in which case the rule, regulation, or amendment shall become effective immediately on posting.

11.3 **Limitations on Authority.** The Board may not unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, Association Property, common areas and recreational facilities. The Board may not deny any resident of the Condominium access to any available franchised or licensed cable television service or exact a charge or anything of value in excess of charges normally paid for like services by residents of single-family homes within the same franchise or license area.

11.4 Reasonableness Test. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of the health, happiness and peace of mind of the unit owners and uniformly applied and enforced.

12. BYLAWS DEEMED AMENDED: These Second Amended and Restated Bylaws shall be deemed amended in those particulars as may be required to make them consistent with the provisions of the Act, as it may be amended from time to time.

13. INDEMNIFICATION: The Condominium Association shall indemnify every director and every officer of the Association against all expenses and liabilities including attorneys' fees incurred by or imposed on them in connection with any legal proceeding to which he may become a party as a result of his position as an officer or director of the Condominium Association, provided, however, said indemnification shall not apply in the event of gross negligence or willful misconduct of the director or officer, or in any criminal action, unless the director or officer acted in good faith and in a manner he reasonably believed was in the best interest of the Condominium Association. Indemnification shall also not apply in the event that there is a Final Judgment or other judicial or quasi-judicial determination that establishes that the act and/or omission is material and the person seeking the indemnification derived an improper personal benefit.

14. AMENDMENTS: Amendments to these Third Amended and Restated Bylaws shall be proposed and adopted in the following manner:

14.1 Proposal. Amendments to these Third Amended and Restated Bylaws may be proposed by the Board of Directors or by written petition to the Board signed by the owners of at least one-fourth (1/4th) of the units.

14.2 Procedure. Upon any amendment or amendments to these Third Amended and Restated Bylaws being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can still be given.

14.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium documents, these Third Amended and Restated Bylaws may be amended if the proposed amendment is approved by a sixty percent (60%) affirmative vote of a majority of those unit owners present in person or by proxy and voting at a duly called meeting.

14.4 Limitation. No amendment shall be made that is in conflict with the Condominium Act or the Third Amended and Restated Declaration, or the Third Amended and Restated Articles.

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

15. MISCELLANEOUS:

15.1 Plural/Gender. Whenever the context permits or requires, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

15.2 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of these Bylaws shall not affect the remaining portions.

15.3 Governance and Operation. The governance and operation of the Condominium shall be by Enclave of Naples Condominium Association, Inc. adhering to Florida and Enclave, a Condominium, documents in the following order:

- a. Florida Statutes
- b. Declaration of Condominium
- c. Articles of Incorporation
- d. Bylaws
- e. Rules and Regulations

15.4 Conflict of Governance Documentation. In the event there shall be any conflict in fact or interpretation as between any of the aforementioned (a) through (e) in 15.3 above, they shall prevail in the order so specified.