

**DECLARATION OF CONDOMINIUM**  
**OF**  
**BAY POINT HARBOUR VILLAS, A CONDOMINIUM**

In a Declaration of Condominium recorded at O.R. Book 389, Pages 343, *et seq.* of the Bay County Public Records on October 16, 1972 ("Original Declaration"), the Condominium Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Bay County, Florida, more particularly described as follows:

Commence at the Northwest corner of Section 14, Township 4 South, Range 15 West, Bay County, Florida. Thence South 00°15'40" East for 318.84 feet to the center line of Bay Point Road. Thence South 82°16'00" East along said center line for 385.87 feet to the beginning of the curve concave to the Southwest and having a central angle of 67°39'5" and a radius of 250.00 feet; thence Southeasterly along said curve in the center line for an arc distance of 295.18 feet, said arc having a chord of 278.33 feet bearing South 48°26'28" East; thence South 14°36'55" East along said center line for 66.98 feet to the beginning of a curve concave to the Northeast and having a central angle of 13°38'10" and a radius of 400.00 feet; thence Southeasterly along said curve in the center line for an arc distance of 95.20 feet, said arc having a chord of 94.97 feet bearing South 21°26'00" East; thence South 28°15'05" East for 69.86 feet; thence South 61°44'55" West for 30.00 feet to the westerly right-of-way line of Bay Point Road for the Point of Beginning. Thence South 28°15'05" East along said right-of-way line for 4.00 feet to the beginning of a curve concave to the West and having a central angle of 48°32'06" and a radius of 320.00 feet; thence Southerly along said curve in the right-of-way line for an arc distance of 271.07 feet, said arc having a chord of 263.04 feet bearing South 03°59'02" East to the beginning of a curve concave to the East and having a central angle of 19°18'43" and a radius of 586.18 feet; thence Southerly along said curve in the right-of-way line for an arc distance of 197.58 feet, said arc having a chord of 196.64 feet bearing South 10°37'40" West to the beginning of a curve concave to the West and having a central angle of 52°10'44" and a radius of 342.39 feet; thence Southwesterly along said curve in the right-of-way line for an arc distance of 311.18 feet, said arc having a chord of 301.15 feet bearing South 27°03'40" West, thence South 53°09'02" West along said right-of-way line for 272.31 feet; thence North 36°50'58" West for 170.81 feet; thence North 39°44'00" West for 36.96 feet; thence North 07°44'00" East for 603.94 feet; thence South 82° 16'00" East for 123.77 feet to the beginning of a curve concave to the Northwest and having a central angle of 63°09'15" and a radius of 140.37 feet; thence northeasterly along said curve for an arc distance of 154.73 feet, said arc having a chord of 147.01 feet bearing North 66°09'23" East to the beginning of a curve concave to the Southeast and having a central angle of 27°10'10" and a radius of 200.00 feet; thence northeasterly along said curve for an arc distance of 99.84 feet, said arc having a chord of 93.55 feet bearing North 48°09'50" East, thence North 61°44'55" East for 46.69 feet to the Point of Beginning, containing 6.27 acres, more or less.

See legal descriptions and plats attached as Exhibits to the Original Declaration and amendments thereto.

Said Original Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 1070, Page 900 , Bay County Public Records.

Amendment recorded at O.R. Book 1129 , Page 1909, Bay County Public Records.

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

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

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

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

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

**1.4 “Association”** means BAY POINT HARBOUR VILLAS ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

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

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

**1.7 “Building”** means the structures in which the Units are located.

**1.8 “Bylaws”** mean the Bylaws of the Association as attached hereto as Exhibit “B”, as they may be amended from time to time.

**1.9 “Charge”** means any legal or equitable indebtedness to the Association incurred by, or on behalf of, a Unit Owner, other than Assessments for Common Expenses. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.



**1.10 “Common Elements” mean and include:**

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

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

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

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

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

**1.11 “Common Expenses”** means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements and such other expenses as may be declared common expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Common Expenses include, but are not limited to, such items as cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills that are not separately metered to individual Units, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of the Association and Condominium Property. The expenses of bulk cable or master antenna television, and bulk interior pest control, are specifically considered a Common Expense, if so designated by the Board. Common Expenses also include reasonable insurance for Directors and Officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or Condominium Property. Common Expenses also include the expenses of any items or services required by any federal, state, or local governmental entity to be installed, or supplied to the Condominium Property by the Association, including, but not limited to, fire safety equipment or water and sewer service for a master meter that services the Condominium Property.

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

**1.13 “Condominium Documents”** means this Amended and Restated Declaration; the Surveyor’s Plat attached to the Original Declaration and all amendments thereto; Articles of Incorporation attached hereto as Exhibit “A”; Bylaws attached hereto as Exhibit “B”; and Rules and Regulations as may be promulgated by the Board of Directors from time to time. The Rules

and Regulations need not (but may) be recorded in the County Public Records in order to be valid.

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

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

**1.16 “County”** means the County of Bay, State of Florida.

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

**1.18 “Family” or “Single Family”** shall refer to any one of the following:

**1.18.1** One natural person or, his spouse, if any, and their custodial children, if any.

**1.18.2** Not more than two natural persons not meeting the requirement of Article 1.18.1 above, but who customarily reside together as a single housekeeping Unit, and the custodial children of said parties, if any.

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

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

**1.20 “Guest”** means any person who is not the Unit Owner or a Tenant or a member of the Owner’s or Tenant’s Family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

**1.21 “Insurable Improvements”** shall mean the “Building” as defined in Article 1.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and



those portions of the Condominium Property required by the Act to be insured by the Association. If a Unit Owner has replaced any glass with impact glass which meets the applicable code at the time of such replacement, such glass and its related framework shall be considered part of the Insurable Improvements, unless prohibited by law.

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

**1.23 “Lease,”** when used in the context of the renting of Units, means the grant by a Unit Owner of a right of use of the Owner’s Unit for consideration.

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

**1.25 “Limited Common Elements”** means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified in the Declaration. Unless the context requires otherwise, all references in this Declaration to Common Elements shall include Limited Common Elements. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (by way of example, but not limitation, air conditioning compressors) shall serve to define the area as a Limited Common Element.

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

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

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

**1.29 “Primary Occupant”** means a natural person designated for occupancy of a Unit when title to the Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person, except where the content clearly indicates otherwise, the term “Owner” shall include “Primary Occupant”.

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

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

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

**1.33 “Unit Owner” or “Owner”** means the record Owner of a Condominium Parcel.

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

**1.35 “Voting Interests”** means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters.

**2. STATEMENT OF CONDOMINIUM DECLARATION.** The Grand Lagoon Company submitted the property described in the Recital section above to condominium ownership in accordance with Florida Statutes

**3. CONDOMINIUM NAME.** The name by which this condominium is identified is “Bay Point Harbour Villas, A Condominium”, formerly known as “Bay Point Studio Villas, A Condominium.”

**4. UNIT IDENTIFICATION.** The identification of each Unit shall be by number and shall be as indicated on the Surveyor’s Plats and Exhibits attached to the Original Declaration and the amendments thereto.

**5. SURVEY AND GRAPHIC DESCRIPTION.** A survey of the land submitted herewith to condominium ownership and a plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the Surveyor’s Plat and Exhibits attached to the Original Declaration and the amendments thereto.

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the Owner of each Unit shall be one Voting Interest per Unit. The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be describe in Exhibit “C”, as attached hereto (which is the same as Exhibit “A” of the Original Declaration).

**7. COMMON ELEMENTS; EASEMENTS.**

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



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

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

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

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

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

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

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership on the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. As long as the Condominium exists, the Common Elements cannot be

partitioned. The shares in the funds and assets of the Association cannot be assigned by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

**8. CONDOMINIUM UNITS AND APPURTENANCES.** Condominium Units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat and Exhibits attached to the Original Declaration and the amendments thereto. The horizontal and vertical boundaries of the Condominium Units shall be as follows:

**8.1. 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:

8.1.1. Upper Boundary- The horizontal plane of the undecorated finished ceiling slab.

8.1.2. Lower Boundary - The horizontal plane of the undecorated finished floor. The lower boundary shall be the upper surface of the undecorated finished floor slab, and the undecorated finished porch floor slab and/or undecorated finished patio floor slab.

**8.2 Perimetrical Boundaries.** The perimetrical boundaries of the Unit shall be the vertical planes of the undecorated finished interior of the walls bounding the Unit extended to intersections with each other and with the upper and lower boundaries. When there is attached to the building a deck, patio, canopy, stairway or other portion of the building serving only the Unit being bounded, the perimetrical boundaries shall be extended to include the intersecting vertical plans adjacent to and which include all of such structures and fixtures thereon.

**8.3 Exclusive Use.** Each Unit Owner shall have the exclusive use of his or her Unit. No timeshare estates shall be created with respect to any Unit.

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

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

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

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

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

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



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

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

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

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

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



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

**9.2.1 Drywall.** The Unit Owner shall maintain, repair and replace all drywall on all interior, non-load bearing partition walls within the Unit, the finishes thereof (including trim) and the structural framing related thereto, including studs and insulation. The Association shall be responsible for the maintenance, repair and replacement of the drywall constituting the Common Elements of the Condominium, including the exterior boundary walls. Decorations of such surfaces (including but not limited to paint, wallpaper, "popcorn", paneling, etc) are the responsibility of the Unit Owner.

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

**9.2.3 Windows.** The Unit Owner shall maintain, repair and replace the window installations, including the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owner shall be responsible for interior window locking and opening mechanisms, the window sill and glass breakage.

**9.2.4 Screens and Frames.** The Unit Owner shall maintain, repair and replace all window screens, screen doors, porch screens or other screens (including hardware and framing), including but not limited to screens of porch enclosures installed by the Unit Owner or his or her predecessor in title.

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

**9.2.6 Doors.** The Unit Owner shall maintain, repair and replace all doors of a Unit, including but not limited to the louver door and front entry door, and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit, except that the Association may paint the exterior of the doors. The Board of Directors, may adopt reasonable rules and regulations governing the style, design and color of the exterior louver and front entry door.

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

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



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

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

**9.2.11 Hardware and Locks.** The Unit Owner shall maintain, repair and replace door and window hardware and locks.

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

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

**9.2.14 Plumbing (Outgoing).** The Unit Owner shall maintain, repair and replace outbound plumbing until the point of exit from the Unit boundary. Provided, however, that the Unit Owner is responsible for the remediation of clogged pipes or drains, where the source of blockage or obstruction originates from the Unit, even if the area where the blockage or obstruction is located is outside of the Unit boundary.

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

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

- Preservation of uniformity of appearance;

- Use of contractor(s) that are properly licensed and fully insured, and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance. Unit Owners are responsible for the actions of their contractors and warrant to the Association, whether or not specifically made a condition of Association approval (or in cases where no Association approval is required) that all persons coming into the Condominium Property to perform work on or services for the Unit hold all proper licenses, have obtained all proper permits, and carry such insurance as may be required by law or the Board;
- Right (but not duty) of oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.
- Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction.
- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.

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

- Activities involving the use of power equipment such as jackhammers, drills, saws, and the like, which create substantial noise, as determined by the Board.
- Activities resulting in the creation of substantial noise that can be heard outside of the Unit, regardless of whether power equipment is used or not, as determined by the Board.
- Activities rendering the Unit uninhabitable during the performance of the work.
- Activities requiring the storage of materials or equipment on the premises outside of the Unit.



- Activities involving the presence of work crews or significant numbers of workers, as determined by the Board.
- Activities requiring the use of scaffolding, booms, or other forms of exterior access.

The Board may waive the prohibition against such work being done in the case of an emergency, in *de minimus* cases, or in hardship situations, as determined by the Board, and may permit the temporary staging of scaffolding for maintenance and repair of hurricane shutters.

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

**9.4 Porches.** The Unit Owner who has the right to the exclusive use of a porch shall be responsible for the maintenance, care and preservation of: porch floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the Building); storm shutters and other enclosures, including screens; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and Fixture(s) on or servicing the porch; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of undecorated porch floors and ceilings and also the Building walls enclosed by the porch, only to the extent as originally constructed pursuant to the plans and specifications of the original Declaration of Condominium. Unit Owners shall be responsible for the maintenance, repair, replacement of any additions or improvements to the porch, including screened enclosures, whether installed by the Unit Owner or his or her predecessor in title. Unit Owners may not puncture (by nails, hooks, screws or otherwise) porch floors, walls, or ceilings, without obtaining the prior written approval of the Board of Directors.

**9.5 Modifications or Alterations by Unit Owners.** No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior, or in any manner change the appearance of any portion of the Common Elements, or make any structural work or structural modification or alteration, without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be



detrimental to, the Condominium in part or whole. "Structural" modifications or alterations include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; addition or modification of the space above the Unit intended to be used as additional storage or living space or for any other purpose; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" work shall also include the addition, removal, or relocation of any duct work, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances and fixtures, with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" modifications or alterations shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permit from the appropriate governmental agency, whether or not mentioned above.

The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Bay Point Harbour Villas, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any modification or alteration which is visible from the exterior of the premises, from any vantage, said modification or alteration must also be approved by the Unit Owners in the manner provided in Article 9.7 of the Declaration of Condominium, regardless of the cost or expense of such modification or alteration. If any Unit Owner requests approval of any structural modification or alteration, the Association may permit such modification or alteration if same would not materially affect or interfere with the utility services constituting Common Elements, if any, located therein, the structural integrity of the Building or create a nuisance or disturbance to neighboring Units.

**9.6 Additional Unit Owner Responsibility for Modifications or Alterations.** If a Unit Owner (or his predecessors in title) makes, or has made any modifications or alterations to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, including but not limited to the construction of attic space or screened enclosure, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, preservation, reconstruction, repair or replacement of the modification or alteration and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Any modification or alteration to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the modification or alteration (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of Lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove



and reinstall said modification or alteration, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent, although the Association may provide for stricter liability standards in contracts with contractors.

**9.7 Material Alterations by Association.** There shall be no material alterations or substantial additions to the Common Elements or Association real property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alteration or addition require or obligate the expenditure of Association funds of more than five percent (5%) of the Association's budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of a two-thirds (2/3) of Voting Interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire Voting Interests. Necessary maintenance of the Common Elements, or Association Property regardless of the level of expenditure, is the responsibility of the Board of Directors. Cellular antennae and similar apparatus may be placed on the Condominium Property as determined by the Board in agreements with third parties.

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

**9.9 Damage Caused by Conditions of the Condominium Property.** Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his or her intentional act or negligence, or by that of any member of his or her Family or his or her or their Guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure, maintain, repair or replace if caused by the Owner's (or his Family, Guests, employees, agents or lessees) negligence or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights.

**9.9.1 Access to Unit.** If one or more of the Units involved is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the



Owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for Charges.

**9.9.2 Electricity.** Unit Owners are also required to ensure that electricity, if separately metered, and water and sewer are always available to service the Unit. If Unit Owner fails to maintain utility services to Unit, the Association shall have, without waiver of other remedies, the right to enter to the Owner's Unit and Limited Common Element and take any and all lawful actions to make the utilities available to service the Unit, in which event the Unit Owner shall be charged for such activities (including attorneys' fees incurred by the Association in regard to the Owner's non-compliance) by the Association which shall be secured by a lien for Charges.

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

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

**10.2 Default in Payment of Assessments for Common Expenses or Charges.** Assessments and installments thereof not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such parcel, with interest, late fees and for reasonable attorney's fees, costs and expenses of collection incurred by the Association incident to the collection of the Assessment or enforcement of the lien. Except as otherwise provided in the Florida Condominium Act (2010), no lien may be filed by the Association against a Condominium Unit until thirty (30) days after the date on which a notice of intent to file a lien has been delivered to the Owner pursuant to Section 718.121(4), Florida Statutes (2010), as amended from time to time. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an Officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment, the Condominium Parcel is entitled to a satisfaction of the lien.



The Association may bring an action in its name to foreclose a lien for Assessments or Charges in the manner that a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments or Charges without waiving any claim of lien.

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

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

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

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

**10.7 Certificate of Unpaid Assessments or Charges.** Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments or



Charges against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

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

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

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

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



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

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

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

**11.5 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property.** The power to acquire real property and transfer real property owned by the Association or otherwise convey and mortgage real property for the use and benefit of its Members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval shall be required to acquire, purchase, or mortgage a Unit in connection with foreclosure of a lien or deed in lieu of foreclosure, nor to dispose of such Unit. Leasing of Common Elements or Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

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

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

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



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

**11.9 Limitation Upon Liability of Association.** Notwithstanding the duty to insure, maintain, repair or replace parts of the Condominium Property, the Association is not liable to Unit Owners or any other person for injury or damage, other than for the cost of maintenance and repair of items for which the Association is otherwise responsible, caused by any latent or unknown condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any alterations or improvements done by or on behalf of any Unit Owners, regardless of whether or not same shall have been approved by the Association pursuant to the provisions hereof. Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, the Association shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property, including, without limitation, residents and their Families, Guests, Tenants, Invitees or for any property of any such persons. Without limiting the generality of the foregoing:

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

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

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

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

As used in this section, "Association" shall include within its meaning all of the Association's Directors, Officers, Committee Members, and other persons the Association may be required to



indemnify, to the extent and limit of such indemnity, and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer.

**11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew.** 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. The Board of Directors shall have the authority to adopt reasonable Rules and Regulations regarding maximum or minimum temperatures for Units and/or require that the air conditioning to the Units be set within certain temperature and/or humidity ranges and may require Owners to take such further actions as the Board deems advisable to control humidity and mold and/or mildew growth.

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

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

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

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

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

**12.2 Coverage.**

**12.2.1 Property Insurance.** Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general property, flood and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the



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

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

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

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



**12.3 Deductible and Other Insurance Features.** The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible shall be consistent with industry standards and prevailing practice for communities of similar size and age, and having similar construction and facilities in the locale where the Condominium Property is situated.

**12.4 Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, or if applicable, a Limited Common Expense.

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

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

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

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

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

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

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



provision that when there is a common casualty loss causing significant damage to the premises, the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage

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

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

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

**12.6.2 Failure to Reconstruct or Repair.** If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Article 17.

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

**12.8 Insurance By Unit Owners.** Unit Owners are required to purchase and maintain adequate insurance coverage as follows. Title insurance is optional, and is the sole responsibility of the Unit Owner. Unit Owners are required to carry basic casualty and liability insurance. Such insurance must include liability coverage for injury to persons or property occurring within the Unit, the Limited Common Elements, or claims involving the Unit Owner's tenants, guests, and invitees. Owners shall also be required to carry casualty insurance (commonly known as "HO-6" insurance, or similar product), in amounts deemed sufficient by the Board (which may establish additional and supplemental individual Unit Owner's insurance obligations from time to time by rule) to provide for the Unit Owner's having adequate insurance to rebuild the interior of the Condominium premises, and any other items the Owner is obligated to reconstruct after casualty in the event of a casualty loss. Owners are also encouraged to carry Loss Assessment coverage, and such other coverages as their individual insurance agent may recommend to provide full protection. The Board may require that Unit Owners provide Certificates of Insurance, or other appropriate evidence of the Unit Owner's carrying such insurance.



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

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

**13.2 The Building.**

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

**13.2.2 Major Damage.** If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed three (3) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

**13.2.3 Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors, regardless of whether it is a material alteration or substantial addition as described in Article 9.7 and no vote of the Unit Owners shall be required.

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



**13.3 Responsibility.** All reconstruction work after a casualty for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board of Administration. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Article 13.5 below. If an Owner fails to repair and reconstruct those items that the Unit Owner is responsible for under this Declaration, the Association shall have, without waiver of other remedies, the right to proceed in accordance with Article 9.8, in which event the Unit Owner shall be charged for the costs of such activities (including attorney's fees incurred by the Association) by the Association which shall be secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a Lien for Charges.

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

**13.5 Assessments.** If the proceeds of insurance and the amount transferred from existing reserves accounts are not sufficient to defray the full cost of reconstruction and repair by the Association, assessments shall be made against all Unit Owners on account of damage to the buildings and improvements on the Condominium Property in an aggregate amount, which, when added to the insurance proceeds available for such purpose, will be sufficient to pay the full cost of the reconstruction and repair of the same; such aggregate amount shall be apportioned among the Unit Owners in proportion to each Unit's appurtenant undivided share in the Common Elements. All amounts so assessed against the Unit Owners shall be collected by the Association in the same manner as other assessments.

**13.6 Construction Funds.** The funds held by the Association for payment of the costs of reconstruction and repair after casualty, shall be disbursed in the following manner:

**13.6.1** Said proceeds shall be disbursed only for reconstructing and repairing the property with respect to which such proceeds were collected;

**13.6.2** If there is a balance remaining after payment of all costs of the reconstruction and repair, such balance shall be distributed to the beneficial Owner or Owners thereof.

**13.7 Termination of Condominium if Not Reconstructed.** If the Owners vote not to reconstruct the Condominium by vote described in Article 17 hereof, the Condominium shall be terminated in accordance with the procedures set forth in Article 17 hereof.



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

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

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

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

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

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

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

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



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

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

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

**14.1 Occupancy of Units; Single Family Residence.** A condominium Unit shall be used only as a Single Family residence. No more than six (6) persons may permanently occupy a Unit. For purposes of these Condominium Documents, "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. Units may not be used for commercial or business purposes. Unit Owners (and their Family members and Tenants) 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, nor more than two regular deliveries per day of correspondence or similar items from customary express delivery services.

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

**14.3 Pets.** Domesticated household pets, such as dogs, cats, fish or birds, may be kept in each Unit by the owner or owners of the Units thereof, provided said pet: (i) is not kept, bred, or maintained for any commercial purpose; (ii) is not or does not become a nuisance or annoyance to neighbors; (iii) is not left unattended on porches; and (iv) is carried, or walked on a leash of not more than six (6) feet in length, at all times when on the Common Elements and/or Association Property. No one other than an Unit Owner is permitted to keep such pet. The right to keep said pet is a license and not a right and shall be subject to reasonable rules promulgated by the Board of Directors, including without limitation, rules regarding the size, weight, height and permissible breeds of said pet. Neither the Association, nor its Board of Directors shall be liable for any personal injury, death or property damage resulting from a violation of this Section or the rules promulgated by the Board of Directors. Any occupant of an Unit committing such violation shall fully indemnify and hold harmless the Board of Directors, each Unit Owner and the Association in such regard. Unit Owners must pick up all solid wastes of their pet and dispose of such waste appropriately. All pets, including cats, must be leashed at all times when outside the Unit on a leash not more than six (6) feet in length. Pets may not be kept in a Common Element or in a Limited Common Element, nor be walked through or kept in public



areas of the Condominium other than while being walked while on a leash. Except as provided herein, no other animals, livestock, poultry, reptiles, wildlife or other exotic pet shall be kept in or on the Condominium Property (including Units). Violation of the provisions of this Section shall entitle the Association to all of its rights and remedies, including, but not limited to, the right of the Board of Directors to require any pet to be permanently removed from the Condominium Property.

**14.3 Signs.** Unit Owners may not display any sign upon or within the Condominium Unit or the Common Elements (including “For Sale”, “For Lease” and “Open House ” signs) without the prior written approval of the Board of Directors which shall not be unreasonably withheld and shall be applied in a nondiscriminatory manner.

**14.4 Use of Common Elements.** The Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Units.

**14.5 Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the Condominium Property nor any part of it; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

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

**15. GUEST OCCUPANCY. GUEST OCCUPANCY.** A “guest” is defined as a person who enters upon the Condominium Property at the invitation of a Unit Owner or tenant, (or their respective families) for the purpose of visiting the Unit Owner or tenant (or their respective families). Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. The Board may, in its discretion, promulgate such rules, policies, and procedures as it deems necessary to regulate the usage of the Condominium Property by “guests”.

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

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

**16.2 Proposed Amendment Format.** Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must



be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

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

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

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

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

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

## **17. TERMINATION.**

**17.1** The Condominium may be terminated under any one of the following alternatives:

**17.1.1 Termination Because of Economic Waste or Impossibility.** Notwithstanding anything to the contrary in this Declaration, the Condominium form of ownership may be terminated by a plan of termination approved by the percentage of Voting Interests necessary to amend the Declaration when:



- the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repair; or
- it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

It is the intent of this provision to incorporate Section 718.117(2), Florida Statutes (2010), as amended from time to time.

**17.1.2 Optional Termination.** Except as provided in Article 17.1.1, the Condominium form of ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the total Voting Interests of the Condominium if not more than ten percent (10%) of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3), Florida Statutes (2010), as amended from time to time.

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

**17.1.4 Mortgage Lienholders.** Notwithstanding any provision to the contrary in this Declaration or Chapter 718, approval of a plan of termination by the holder of a recorded mortgage lien affecting a Condominium Parcel is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the Condominium Parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Sections 718.117(16), Florida Statutes (2010), as amended from time to time.

**17.2 Procedures for Termination and Sale.** The termination of the Condominium via either of the methods set forth in 17.1.1 through 17.1.3 herein shall be as set forth in Section 718.117(4) – (20), Florida Statutes (2010), as amended from time to time.

**17.3 Amendment.** This Article 17 may be amended in the same manner in which this Declaration of Condominium may be amended generally, as set forth in Article 17.

## **18. CONDEMNATION.**

**18.1 Awards.** The taking of all or any part of the Condominium Property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the



awards with the Association, and if any fail to do so, a special assessment shall be made against a defaulting Unit Owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that Owner.

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

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

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

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

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

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

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

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



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

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

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

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

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

## **19. COMPLIANCE AND DEFAULT.**

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

**19.1.1** The Association;

**19.1.2** A Unit Owner; or

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

**19.2 Attorney's Fees.** In any legal proceeding arising out of an alleged failure of a Unit Owner, Family member, Tenant, Guest, Invitee Unit Occupant or the Association to comply with the requirements of the Condominium Act or the Condominium Documents, as they may be



amended from time to time, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal.

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

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

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

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

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

**19.5.3 Failure to Comply.** Failure of an Owner to comply with this Section 21.5 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

## **20. MISCELLANEOUS PROVISIONS.**

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

**20.2 Savings Clause.** If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any



Court, or other governmental agency with proper authority to so hold, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

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

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

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

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

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

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

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

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

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