

**SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
MYERLEE CIRCLE CONDOMINIUM**

<b>1. DEFINITIONS.</b>	<b>2</b>
1.1 "Act" or "Condominium Act"	2
1.2 "Articles"	2
1.3 "Assessment"	3
1.4 "Association"	3
1.5 "Association Property"	3
1.6 "Board of Directors" or "Board" or "Directors"	3
1.7 "Building"	3
1.8 "Bylaws"	3
1.9 "Charge"	3
1.10 "Common Elements"	3
1.11 "Common Expenses"	3
1.12 "Common Surplus"	4
1.13 "Condominium Documents"	4
1.14 "Condominium Parcel"	4
1.15 "Condominium Property"	4
1.16 "County"	4
1.17 "Declaration" or "Declaration of Condominium"	5
1.18 "Domestic Partners"	5
1.19 "Family" or "Single Family"	5
1.20 "Fractional Ownership" or "Unit Sharing"	5
1.21 "Guest"	5
1.22 "Insurable Improvements"	5
1.23 "Invitee"	6
1.24 "Lease"	6
1.25 "Lien for Charges"	6
1.26 "Limited Common Elements"	6
1.27 "Limited Common Expense"	6
1.28 "Member"	6
1.29 "Occupant"	6
1.30 "Primary Occupant"	6
1.31 "Rules and Regulations"	6
1.32 "Tenant" or "Lessee"	6
1.33 "Unit"	7
1.34 "Unit Owner" or "Owner"	7
1.35 "Utility Services"	7

1.36	"Voting Interests" .....	7
2.	STATEMENT OF CONDOMINIUM DECLARATION. ....	7
3.	CONDOMINIUM NAME. ....	7
4.	UNIT IDENTIFICATION. ....	7
5.	SURVEY AND GRAPHIC DESCRIPTION. ....	7
6.	VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS. ....	7
7.	COMMON ELEMENTS; EASEMENTS.....	7
7.1	Definition. ....	7
7.2	Easements. ....	8
7.2.1	Utility and Other Easements. ....	8
7.2.2	Encroachments. ....	8
7.2.3	Ingress and Egress. ....	8
7.2.4	Maintenance, Repair and Replacement. ....	8
7.2.5	Support. ....	8
7.3	Restraint Upon Separation and Partition. ....	8
8.	CONDOMINIUM UNITS AND APPURTENANCES. ....	9
8.1	Horizontal Boundaries: ....	9
8.1.1	Upper Boundary.....	9
8.1.2	Lower Boundary .....	9
8.2	Vertical Boundaries: ....	9
8.2.1	Exterior Boundaries.....	9
8.2.2	Between Units Joined by a Common Wall .....	9
8.2.3	Between Units and Other Common Use Areas .....	9
8.3	Exclusive Use. ....	9
8.4	Appurtenances. ....	9
8.4.1	Common Elements. ....	9
8.4.2	Easements. ....	9
8.4.3	Association Membership .....	10
8.4.4	Limited Common Elements. ....	10
8.5	Easement to Air Space. ....	10
9.	MAINTENANCE, ALTERATION AND IMPROVEMENTS. ....	10
9.1	Association Maintenance. ....	10
9.1.1	General Exterior Maintenance. ....	10
9.1.2	Plumbing and Electrical. ....	10
9.1.3	Incidental Damage. ....	10
9.2	Unit Owner Maintenance. ....	11
9.2.1	Windows. ....	11
9.2.2	Screens and Frames. ....	11
9.2.3	Drywall. ....	11
9.2.4	Electrical. ....	11
9.2.5	Hurricane Shutters. ....	11
9.2.6	Sliding Glass Doors. ....	11
9.2.7	Unit Front Door. ....	12
9.2.8	Other Doors. ....	12
9.2.9	Plumbing and Mechanical. ....	12

9.2.10	Appliances. ....	12
9.2.11	Heating and Air Conditioning Equipment; Ductwork. ....	12
9.2.12	Floor Coverings. ....	12
9.2.13	Hardware and Locks. ....	12
9.2.14	Other Facilities and Fixtures. ....	12
9.2.15	Plumbing (Incoming). ....	12
9.2.16	Plumbing (Outgoing). ....	12
9.2.17	Garages. ....	13
9.3	Unit Owner Obligations In Connection with Maintenance, Repair and Replacement. ....	13
9.4	Porches and/or Terraces. ....	14
9.5	Modifications or Alterations by Unit Owners. ....	14
9.6	Additional Unit Owner Responsibility for Modifications or Alterations. ....	15
9.7	Material Alterations by Association. ....	16
9.8	Enforcement of Maintenance. ....	16
9.9	Damage Caused by Conditions of the Condominium Property. ....	16
10.	ASSESSMENTS AND CHARGES. ....	19
10.1	Liability for Assessments and Charges. ....	19
10.2	Default in Payment of Assessments for Common Expenses or Charges. ....	19
10.3	Notice of Intention to Foreclose Lien. ....	19
10.4	Attachment of Rental Income When Unit is Delinquent. ....	20
10.5	First Mortgagee. ....	20
10.6	Certificate of Unpaid Assessments or Charges. ....	20
10.7	Lien for Charges. ....	20
10.8	Other Remedies. ....	21
11.	ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM. ....	21
11.1	Access. ....	21
11.2	Assessments and Charges. ....	21
11.3	Delegation. ....	21
11.4	Regulations. ....	22
11.5	Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property. ....	22
11.6	Membership Agreements. ....	22
11.7	Fees for Use of Common Elements; Other Fees and Deposits. ....	22
11.8	Lease of Association Property or Common Elements. ....	22
11.9	Limitation Upon Liability of Association. ....	23
11.10	Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew. ....	24
11.11	Restraint Upon Assignment of Shares in Assets. ....	24
12.	INSURANCE. ....	24
12.1	Authority to Purchase Insurance. ....	24
12.2	Coverage. ....	24
12.2.1	Property Insurance. ....	24
12.2.2	Flood. ....	25
12.2.3	Liability Insurance. ....	25
12.2.4	Fidelity Bond. ....	26

12.2.5	Worker's Compensation. ....	26
12.2.6	Other Insurance. ....	26
12.3	Deductible and Other Insurance Features. ....	26
12.4	Premiums. ....	26
12.5	Insurance Shares or Proceeds. ....	26
12.5.1	Common Elements; Proceeds On Account Of Damage To Common Elements. ....	26
12.5.2	Unit; Proceeds On Account Of Damage To Units Shall Be Held In The Following Undivided Shares. ....	26
12.5.3	Mortgages. ....	27
12.6	Distribution of Proceeds. ....	27
12.6.1	Reconstruction or Repair. ....	27
12.6.2	Failure to Reconstruct or Repair. ....	27
12.7	Association as Agent. ....	28
13.	RECONSTRUCTION AFTER CASUALTY. ....	28
13.1	Common Elements. ....	28
13.2	The Buildings.....	28
13.2.1	Lesser Damage. ....	28
13.2.2	Major Damage. ....	28
13.2.3	Plans and Specifications. ....	28
13.2.4	Definition of "Uninhabitable". ....	28
13.3	Responsibility. ....	29
13.4	Estimates of Costs. ....	29
13.5	Assessments. ....	29
13.6	Termination of Condominium if Not Reconstructed. ....	29
13.7	Additional Board Authority. ....	29
14.	USE RESTRICTIONS. ....	31
14.1	Occupancy of Units; Single Family Residence. ....	31
14.2	Nuisance. ....	31
14.3	Common Areas, Porches and Walkways. ....	31
14.4	Pets/Animals. ....	31
14.5	Signs. ....	32
14.6	Artifacts, Objects of Art, Yard Decorations. ....	32
14.7	Motorcycles. ....	32
14.8	Additional Restrictions. ....	32
15.	GUEST OCCUPANCY. ....	32
15.1	Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence. ....	32
15.2	Overnight Guests When Unit Owner or Tenant is in Residence. ....	33
15.3	Non-Overnight Guests in the Absence of the Unit Owner or Tenant. ....	33
15.4	Overnight Guests in the Absence of the Unit Owner or Tenant. ....	33
15.4.1	Non-Related Overnight Guests.....	33
15.4.2	Related Overnight Guests .....	33
15.5	Additional Board Authority. ....	33
16.	LEASING. ....	34

16.1	Board Right of Approval.	34
16.2	Tenant Conduct; Remedies.	34
16.3	Security Deposit.	35
16.4	Approval Process; Disapproval.	35
16.5	Liability.	36
16.6	Association Fee.	36
17.	MAINTENANCE OF COMMUNITY INTERESTS.	36
17.1	Forms of Ownership:	36
17.1.1	Ownership by Individuals.	36
17.1.2	Co-Ownership.	36
17.1.3	Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities.	37
17.1.4	Life Estate.	37
17.2	Transfers Subject to Approval.	37
17.2.1	Sale or Other Transfer.	37
17.2.2	Gift.	37
17.2.3	Devise or Inheritance.	38
17.2.4	Other Transfers.	38
17.3	Approval by Association.	38
17.3.1	Notice to Board of Directors.	38
17.3.2	Certificate of Approval.	38
17.4	Disapproval by Board of Directors.	39
17.4.1	Sale or Other Arms-Length Transaction to Bona Fide Third Party.	39
17.4.2	Gifts; Devise; Inheritance; Familial Transfers.	39
17.4.3	Disapproval for Good Cause.	40
17.5	Transfer Fee.	41
17.6	Exceptions.	41
17.7	Unauthorized Transactions.	41
18.	METHOD OF AMENDMENT OF DECLARATION.	41
18.1	Proposal of Amendments.	41
18.2	Proposed Amendment Format.	42
18.3	Notice.	42
18.4	Adoption of Amendments.	42
18.5	Effective Date.	42
18.6	Automatic Amendment.	42
18.7	Proviso.	42
19.	TERMINATION.	42
19.1		42
19.1.1	Termination Because of Economic Waste or Impossibility.	43
19.1.2	Optional Termination.	43
19.1.3	Very Substantial Damage.	43
19.1.4	Mortgage Lienholders.	43
19.2	Procedures for Termination and Sale.	43
19.3	Amendment.	43
20.	CONDEMNATION.	44

20.1	Awards.	44
20.2	Determination Whether to Continue Condominium.	44
20.3	Distribution of Funds.	44
20.4	Association as Agent.	44
20.5	Units Reduced but Habitable.	44
20.5.1	Restoration of Unit.	44
20.5.2	Distribution of Surplus.	44
20.5.3	Adjustment of Shares in Common Elements.	44
20.6	Units Not Habitable.	45
20.6.1	Payment of Award.	45
20.6.2	Addition to Common Elements.	45
20.6.3	Assessments.	45
20.7	Taking of Common Elements.	45
20.8	Amendment of Declaration.	45
21.	COMPLIANCE AND DEFAULT.	45
21.1	Duty to Comply; Right to Sue.	45
21.2	Attorney's Fees.	46
21.3	No Election of Remedies.	46
21.4	Waiver of Application of Condominium Documents.	46
21.5	Notice of Lien or Suit.	46
21.5.1	Notice of Lien.	46
21.5.2	Notice of Suit.	46
21.5.3	Failure to Comply.	47
22.	MISCELLANEOUS PROVISIONS.	47
22.1	Covenants Running with the Land.	47
22.2	Savings Clause.	47
22.3	Heirs, Successors and Assigns.	47
22.4	Notices.	47
22.5	Compliance with Fair Housing Laws.	47
22.6	Conflicts.	47
22.7	Interpretation.	47
22.8	Captions and Headings.	47
22.9	Waiver.	48
22.10	Plurality; Gender.	48

**SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
MYERLEE CIRCLE CONDOMINIUM**

**RECITALS:**

In a Declaration of Condominium recorded at O.R. Book 856, Page 813, *et seq.* of the Lee County Public Records on September 22, 1972, the Condominium Developer did submit to condominium ownership pursuant to Chapter 711, Florida Statutes, known as the Condominium Act (now Chapter 718), that property situated in Lee County, Florida, more particularly described as follows:

A PART OF SECTION 28, TOWNSHIP 45 SOUTH, RANGE 24 EAST:  
STARTING AT THE NORTHEAST CORNER OF AFORESAID SECTION 28; THENCE S 89°54' W ALONG THE NORTH LINE OF AFORESAID SECTION 28 A DISTANCE OF 550.00 FEET TO A POINT AND THE PRINCIPAL PLACE OF BEGINNING; THENCE CONTINUING S 89° 54' W A DISTANCE OF 1855.26 FEET; THENCE S 0° 08' 25" E A DISTANCE OF 72.10 FEET; THENCE S 68° 19' 34" E A DISTANCE OF 1031.08 FEET; THENCE BY A CURVE DEFLECTING TO THE RIGHT A DISTANCE OF 268.40 FEET, SAID CURVE HAVING A RADIUS OF 580 FEET AND A CHORD THAT BEARS S 55° 04' 08" E A DISTANCE OF 226.01 FEET; THENCE BY A CURVE DEFLECTING TO THE LEFT A DISTANCE OF 465.19 FEET, SAID CURVE HAVING A RADIUS OF 550 FEET AND A CHORD THAT BEARS S 66° 02' 26" E A DISTANCE OF 451.45 FEET; THENCE N 89° 43' 48" E A DISTANCE OF 270.00 FEET; THENCE N 0° 16' 12" W A DISTANCE OF 790.52 FEET TO THE PLACE OF BEGINNING.

The Condominium Property is further described at Condominium Plat Book 2, Page 247, *et seq.*, of the Lee County Public Records.

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 1000, Page 1143, *et seq.*, Lee County Public Records;

Amendment recorded at O.R. Book 1028, Page 1750, *et seq.*, Lee County Public Records;

Amendment recorded at O.R. Book 1097, Page 2129, *et seq.*, Lee County Public Records;

Second Amended and Restated Declaration of Condominium  
(Page 1 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

Amendment recorded at O.R. Book 1122, Page 436, *et seq.*, Lee County Public Records;  
Amendment recorded at O.R. Book 1481, Page 429, *et seq.*, Lee County Public Records;  
Amendment recorded at O.R. Book 1549, Page 1592, *et seq.*, Lee County Public Records;  
Amendment recorded at O.R. Book 1707, Page 550, *et seq.*, Lee County Public Records;  
Amendment recorded at O.R. Book 2031, Page 148, *et seq.*, Lee County Public Records;  
Amendment recorded at O.R. Book 2120, Page 4107, *et seq.*, Lee County Public Records;  
Amendment recorded at O.R. Book 2516, Page 2936, *et seq.*, Lee County Public Records;  
Amendment recorded at O.R. Book 2798, Page 523, *et seq.*, Lee County Public Records;  
Amendment recorded at Instrument No. 2006000004772, Lee County Public Records;  
and  
Certificate of Recording recorded at Instrument No. 2008000308653, Lee 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 Second Amended and Restated Declaration of Condominium (hereinafter "Declaration"), the Association Members hereby adopt certain amendments to the First Amended and Restated Declaration of Condominium and amendments thereof, and hereby restate the Declaration in its entirety. By adoption of this Declaration, the Members of the Association ratify governance of the property described above and in Exhibit "A" hereto under the condominium form of ownership and the provisions of the Condominium Act, as defined in Article 1.1 hereof.

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

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

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

Second Amended and Restated Declaration of Condominium  
(Page 2 of 48)



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 MYERLEE CIRCLE CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

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

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

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

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

1.9 **"Charge"** means any legal or equitable indebtedness or sums owed to or due 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

Second Amended and Restated Declaration of Condominium  
(Page 3 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

declared expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Bulk interior pest control for Units, if provided by the Association is a Common Expense. Common Expenses include, but are not limited to, such items as cost of premiums for property and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills that are not separately metered to individual Units, pool service, recreational facilities and activities, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of communications services as defined in chapter 202, information services, or Internet services, 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 where a master meter services the Condominium.

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

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

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

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

Second Amended and Restated Declaration of Condominium  
(Page 4 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

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

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

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

**1.19.1** One natural person, his spouse or Domestic Partner, if any, and their custodial children, if any.

**1.19.2** Not more than two natural persons not meeting the requirement of Article 1.19.1 above, but who customarily and continuously reside together as a single housekeeping Unit, and the custodial children of said parties, if any.

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

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

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

**1.22 "Insurable Improvements"** shall mean the "Buildings" as defined in 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 windows or sliding glass doors and its related framework shall be considered part of the Insurable Improvements, unless prohibited by law.

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

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

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

**1.26 "Limited Common Elements"** 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.

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

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

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

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

**1.31 "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.

**1.32 "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".

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

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

**1.35 "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.

**1.36 "Voting Interests"** means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters. There are 100 Units, so the total number of Voting Interests is 100.

**2. STATEMENT OF CONDOMINIUM DECLARATION.** L & M DEVELOPMENT CORP., a Florida corporation, submitted the property described in Exhibit "A" hereto and as described above to condominium ownership in accordance with Florida Statutes.

**3. CONDOMINIUM NAME.** The name by which this Condominium is identified is "Myerlee Circle Condominium".

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

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

**6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS.** The voting rights of the Owner of each Unit shall be 1/100<sup>th</sup> (one Voting Interest per Unit). Voting rights may be suspended pursuant to the terms of the Condominium Documents and/or Florida Law. The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be on a 1/100<sup>th</sup> basis. Suspension of voting rights shall not affect the total number of Voting Interests, nor shall it affect the basis for which Common Expenses are shared or Common Elements and Common Surplus owned.

**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 Section 8 below.

Second Amended and Restated Declaration of Condominium  
(Page 7 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**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 communications, information or internet services, 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 Plat, Exhibit "A." Each Unit shall be bounded as to both horizontal and vertical boundaries as shown on the "Architect's Plan", subject to such encroachments as are contained in the buildings, whether the same exist now or are created by construction, settlement or movement of the building, or permissible repairs, re-construction or alterations. Said boundaries are intended to be as follows, and shall be determined in the following manner:

**8.1 Horizontal Boundaries:** The upper and lower boundaries of the Unit shall be:

**8.1.1 Upper Boundary** – The plane of the under surfaces of the ceiling joists and the chords of the roof trusses which serve as ceiling joists.

**8.1.2 Lower Boundary** – The plan of the upper surfaces of the concrete floor slabs.

**8.2 Vertical Boundaries:** The vertical boundaries of the Unit shall be:

**8.2.1 Exterior Boundaries** – The exterior of the outside walls of the Unit building except where there is attached to or in existence as a part of the building a porch, terrace or other portion of the building serving only the Unit being bounded, in which event the boundaries shall be such as will include all such structures.

**8.2.2 Between Units Joined by a Common Wall** – The plane formed by the center line of such wall between the Units.

**8.2.3 Between Units and Other Common Use Areas** – The plane formed by the exterior of the Unit wall between the Unit and the common use areas.

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

Second Amended and Restated Declaration of Condominium  
(Page 9 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**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, 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 (but not including) the electrical meter outward; plumbing fixtures and installations located from the water shut off valve (Unit Owner responsible for valve) outward as to inbound plumbing; and clean out trap located outside of front of each Unit (Association responsible for trap) outward as to outward plumbing. 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 or those serving only that Unit as described further above in Articles 9.2.4, 9.2.15 and 9.2.16.

**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

Second Amended and Restated Declaration of Condominium  
(Page 10 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707



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

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

**9.2.1 Windows.** The Unit Owners shall maintain, repair and replace the window installations originally installed by the Developer and replacements thereof subject to the provisions of Article 9.10 hereof. Same includes the window frame and encasement, the plate glass, and all caulking thereof. The Unit Owner shall be responsible for interior window locking and opening mechanisms, the windowsill and glass breakage due to any cause.

**9.2.2 Screens and Frames.** The Unit Owner shall maintain, repair and replace all window screens, screen doors or porch and/or terrace screens (including hardware and framing), subject to the provisions of Article 9.10.

**9.2.3 Drywall.** The Unit Owner shall maintain, repair and replace all drywall within the Unit, the finishes thereof (including trim), and the structural framing related thereto, including studs and insulation, including drywall on the exterior boundary walls and the finish of the ceiling.

**9.2.4 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 fixtures, apparatus or installations from the electrical meter inward, which service only that Unit.

**9.2.5 Hurricane Shutters.** The Unit Owner shall maintain, repair and replace hurricane shutters and the structural components thereof, subject to the provisions of Article 9.10.

**9.2.6 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, subject to the provisions of Article 9.10.

Second Amended and Restated Declaration of Condominium  
(Page 11 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**9.2.7 Unit Front Door.** The Unit Owner shall maintain, repair and replace Unit front entry door, except that the Association may paint the exterior of entry doors, subject to the provisions of Article 9.10. When Unit Owners paint exterior doors, paint must be the same color as exists in the Condominium (i.e. all entry doors must be uniform in appearance).

**9.2.8 Other Doors.** The Unit Owner shall maintain, repair and replace all other doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit, subject to the provisions of Article 9.10.

**9.2.9 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.

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

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

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

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

**9.2.14 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.

**9.2.15 Plumbing (Incoming).** The Unit Owner shall maintain, repair and replace all incoming plumbing from and including the shut-off valve (located behind each Unit) inward.

**9.2.16 Plumbing (Outgoing).** The Unit Owner shall maintain, repair and replace outbound plumbing to the clean out trap (Association responsible for traps). Provided, however, that the Unit Owner is responsible for the remediation of clogged traps, pipes or drains, no matter where located 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.

**9.2.17 Garages.** Garages are part of the Unit. The Unit Owner shall be responsible for the interior of the garage, including all lighting, electrical fixtures, drywall, and other installations. The Association may paint the exterior of garage doors in connection with the painting of the Buildings. When Unit Owners paint garage doors, paint must be the same color as exists in the Condominium (i.e. all garage doors must be uniform in appearance). Otherwise, the maintenance, repair, and replacement of garage doors, openers, and all related fixtures and apparatus are the responsibility of the Unit Owner.

All said areas, if located outside of the boundaries of the Unit, are declared Limited Common Elements. Responsibility for maintenance, repair and replacement of Condominium Property may not coincide with obligation for insurance of Condominium Property, nor its repair after casualty, which are governed by Article 12 and Article 13 hereof, respectively. The Board of Directors may specify standards for Unit Owner maintenance responsibilities, including without limitation requiring certain fixtures or equipment to be replaced periodically and the maintenance of minimum standards for internal Unit temperature and humidity control.

**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;

Second Amended and Restated Declaration of Condominium  
(Page 13 of 48)

- 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.

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

**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

Second Amended and Restated Declaration of Condominium  
(Page 14 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition, door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" work shall also include the addition, removal, or relocation of any duct work, plumbing line or fixture, any electrical line or fixture, or the removal, modification or creation of any interior partition. Replacement of cabinetry, appliances and fixtures, with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association, unless a building or other permit is required. Further, "structural" 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 Myerlee Circle Condominium, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any 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 this Declaration, 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, 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, as may apparatus necessary or appropriate to provide communications, information or internet services.

**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 intentional act or negligence, or by that of any member of his Family or his or their Occupants, Guests, Tenants or Invitees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure, maintain, repair, or replace if caused by the Owner's (or his Family member's, Occupant's, Guest's, Tenant's or Invitee's) acts, negligence, or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association or another Unit Owner relative to damage to the Condominium Property, to the extent the Association or other Unit

Owner might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon the Unit Owner making the claim being adequately insured based on local standards and conditions, whether or not individual Unit Owner insurance is mandated by the Act. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss and without waiving any other remedy of the Association regarding Unit Owner insurance requirements. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability or responsibility on the Association or other Unit Owners (without limitation, the Association shall not be obligated to obtain proof of Unit Owner insurance), but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in condominiums located in Florida's coastal communities, condominiums in general, including but not limited to damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, water seepage and leakage, and mold and mildew, regardless of whether such insurance is legally required. If one or more of the Units involved is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a Lien for Charges. Unit Owners are required to shut off all water valves when the Unit will be unoccupied on an overnight basis, and failure to do so will create a presumption of negligence.

Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer, are always available to service the Unit. If Unit Owner fails to maintain Utility Services to Unit, the Association shall have, without waiver of other remedies, the right to enter into 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) by the Association which shall be secured by a Lien for Charges.

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

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

architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the Board may not install hurricane shutters or other hurricane protection, if prohibited by law.

The Association shall be responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection authorized by this Article 9.10 if such hurricane shutters or other hurricane protection are the maintenance, repair and replacement responsibility of the Association pursuant to this Declaration. If the hurricane shutters or other hurricane protection authorized by this Article 9.10 are the maintenance, repair and replacement responsibility of the Unit Owners pursuant to this Declaration, the responsibility for the maintenance, repair, and replacement of such items shall be the responsibility of the Unit Owner.

The Board may operate shutters installed pursuant to this Article 9.10 without permission of the Unit Owners only where such operation is necessary to preserve and protect the Condominium Property and Association Property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the Common Elements or Association Property within the meaning of the Act or this Declaration.

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

The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection by the Board pursuant to this Article 9.10 shall constitute a Common Expense as defined herein and shall be collected in the manner of Common Expense Assessments generally, if the Association is responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection pursuant to this Declaration. However, if the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection is the responsibility of the Unit Owners pursuant to this Declaration, the cost of the installation of the hurricane shutters or other hurricane protection shall not be Common Expense, but shall be charged individually to the Unit Owners based on the cost of installation of the hurricane shutters or other hurricane protection appurtenant to the Unit. Notwithstanding the provisions of Section 718.116(9), Florida Statutes, and regardless of whether or not the Declaration requires the Association or Unit Owners maintain, repair, or replace hurricane shutters or other hurricane protection a Unit Owner who has previously installed hurricane shutters in accordance with Section 718.113(5), Florida Statutes, other hurricane protection or laminated glass architecturally designed to function as hurricane protection, which hurricane shutters or other hurricane protection or laminated glass comply with the current applicable building code, shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit. However, such Unit Owner shall remain responsible for the pro rata share of expenses for hurricane shutters or other hurricane protection installed on Common Elements and Association Property by the Board pursuant to Section 718.113(5), Florida Statutes, and

Second Amended and Restated Declaration of Condominium  
(Page 18 of 48)



shall remain responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters or other hurricane protection.

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

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

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

**10.3 Notice of Intention to Foreclose Lien.** So long as required by law, no foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid

Second Amended and Restated Declaration of Condominium  
(Page 19 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

Assessments or Charges. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified mail, return receipt requested, addressed to the Unit Owner. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this provision are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

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

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

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

**10.7 Lien for Charges.** There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure repayment to the Association when it must remove or reinstall Unit Owner alterations or items of Unit Owner insurance, maintenance,

Second Amended and Restated Declaration of Condominium  
(Page 20 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

repair or replacement responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

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

**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. A pass key must be provided by the Unit Owner to the Association for each Unit entry door, and garage doors, if locked. When a Unit Owner must maintain, repair or replace portions of the Condominium Property as provided herein, and which requires access to another Unit for said purpose, the Unit Owner shall have reasonable right of access which shall be administered through the Association. Such Unit Owner shall be obligated to repair any damage to the Condominium Property as provided in Article 9.1.3 hereof.

**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

Second Amended and Restated Declaration of Condominium  
(Page 21 of 48)

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. No Unit Owner approval shall be required in connection with the Association's right of first refusal set forth in Article 17 hereof. Leasing of Units, Common Elements or Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

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

**11.7 Fees for Use of Common Elements; Other Fees and Deposits.** 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: clubhouse/meeting room deposits, use fees and/or clean-up fees; fees for the issuance of parking passes or decals; fees for architectural/engineer review of renovation/alteration plans; contractor damage deposits; and internet service, facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

**11.8 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 Building roof areas and other Common Elements for antennas or other telecommunications and similar equipment. No use fee may be charged against a Unit Owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement, or fees authorized by this Declaration of Condominium.

Second Amended and Restated Declaration of Condominium  
(Page 22 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

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

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

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

**11.9.2** The Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Lee 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.

Second Amended and Restated Declaration of Condominium  
(Page 23 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**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, or any person or entity the Association is obligated to indemnify (and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer) arising out of, relating to, or in any way connected with indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of mold and/or mildew or any chemical or toxin secreted therefrom.

**11.11 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 and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the replacement value thereof, including coverage for

changes in building codes, if reasonably available and determined commercially practicable by the Board, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping and exterior improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. The Association shall determine the replacement value of the Insurable Improvements through independent appraisal, at least every 36 months, so long as required by the Act. The Board shall establish deductibles, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the 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 and/or terrace electrical fixtures; appliances; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; and replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit. The Unit Owners shall also be responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title.

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

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

Second Amended and Restated Declaration of Condominium  
(Page 25 of 48)

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

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

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

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

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

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

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

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

**12.5.2.1 Surplus.** It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction



and repair for which the fund is established, such balance shall be distributed in the manner elsewhere stated.

**12.5.2.2 When The Condominium Building Is To Be Restored.**

For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

**12.5.2.3 When The Condominium Building Is Not To Be**

**Restored.** An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

**12.5.2.4 Common Elements and Units.**

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

**12.5.3 Mortgages.**

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

**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 19.

Second Amended and Restated Declaration of Condominium

(Page 27 of 48)

LAW OFFICES

BECKER & POLIAKOFF, P.A.

12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966

TELEPHONE (239) 433-7707

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

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

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

**13.2 The Buildings.**

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

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

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

Second Amended and Restated Declaration of Condominium  
(Page 29 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

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

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

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

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

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

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

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

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

**Second Amended and Restated Declaration of Condominium  
(Page 30 of 48)**

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

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

**14.1 Occupancy of Units; Single Family Residence.** A Condominium Unit shall be used only as a Single Family residence. As used in the Condominium Documents, "Single Family" means one natural person, a group of two or more natural persons who customarily reside together as a Single Family housekeeping Unit, each of whom is related to each of the others by blood, marriage (or domestic partnership) or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping Unit. No more than four (4) 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. No person may occupy a Unit as a Unit Owner, Tenant, or Family member thereof (i.e., occupy the Unit on an overnight basis for more than thirty (30) days in a calendar year) unless said person's occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider factors set forth in Article 17 hereof, and may charge a reasonable fee for review of occupancy requests. Visitation by Guests is governed by Article 15 of this Declaration of Condominium. 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 Common Areas, Porches and Walkways.** Common areas shall not be obstructed, littered, defaced or misused in any manner. Porches and walkways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

**14.4 Pets/Animals.** Unit Owners will be allowed to own one (1) cat. The cat must be kept inside the Unit at all times, except when being transported off premises (and then must be in

Second Amended and Restated Declaration of Condominium  
(Page 31 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

a box or crate). Cat owners must dispose of soiled kitty litter, in sealed, leak-proof plastic bag. All other pets or animals of any kind or description are prohibited, except service or support animals, as may be required by local, state, or federal laws and if approved, in writing, by the Board. If service or support animals are kept at the Condominium, the owners of such animals shall be responsible to ensure that the animal does not create a nuisance, and that all waste is immediately picked up, and that such service or support animal is kept on a leash when outside of the Unit.

**14.5 Signs.** No Unit Owner may post or display any signs anywhere, in or on the Common Elements including "For Sale" or "For Rent" or other similar signs. One sign per year may be posted for garage sales as provided by the Rules. "Open House" signs may be posted while the Unit Owner or a real estate agent is physically present in the Unit for the purpose of conducting an "open house".

**14.6 Artifacts, Objects of Art, Yard Decorations.** No Unit Owner shall place any yard decorations on the Common Elements except by Board approval. Flowerbeds, walkways and driveways may be edged by materials extending not more than six (6) inches above the surface of the lawn or the walkway and driveway.

**14.7 Motorcycles.** Motorcycles are not permitted to be operated on the Condominium Property.

**14.8 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.** 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), occupying the Condominium Unit for less than thirty (30) days during any calendar year, or utilizing the Condominium Property. Use or visitation without consideration (payment) distinguishes a Guest usage from a tenancy. There are various types of Guest uses, which are regulated as follows:

**15.1 Non-Overnight Visitation by Guests When Unit Owner or Tenant is in Residence.** There is no restriction against this type of Guest usage, provided that same does not create a nuisance or annoyance to other Condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict or prohibit Guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Non-overnight Guests need not be registered with the Association. Non-overnight Guests shall be entitled to use the Condominium facilities only when accompanied by the Unit Owner or Tenant (or an adult, resident Member of the Unit Owner's or Tenant's Family), unless otherwise approved by the Board of Directors. The Board

may establish additional restrictions on non-overnight Guest usage of Condominium facilities, including but not limited to the maximum numbers of Guests who may use common facilities.

**15.2 Overnight Guests When Unit Owner or Tenant is in Residence.** Unit Owners and Tenants (and their respective Families) may have related or unrelated overnight Guests, so long as the Unit Owner or Tenant is in simultaneous residence. There is no requirement for registration of overnight Guests with the Board. The Association may restrict or prohibit Guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. Under no circumstances may more than eight (8) persons (including the Unit Owners, Tenants, their Families, Guests or any other Occupants) sleep overnight in a Unit.

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

**15.4 Overnight Guests in the Absence of the Unit Owner or Tenant.** Tenants are not permitted to have overnight Guests (related or non-related) in the absence of the Tenants' simultaneous residence. Unit Owners are permitted to have overnight Guests in the absence of the Unit Owner subject to the following conditions, and such other Rules and Regulations as may be deemed necessary by the Board to effectuate the residential, non-transient nature of this Condominium.

**15.4.1 Non-Related Overnight Guests** in the absence of the Unit Owner will be limited to two (2) occupancies per calendar year. The limitation on Unit density in Article 15.2 applies. Ten (10) days prior notice to the Association is required.

**15.4.2 Related Overnight Guests** may occupy a Unit in the absence of the Unit Owner. For the purpose of this provision, "related" means all persons who are staying in the Unit on an overnight basis, in the absence of the Unit Owner, are related to the Unit Owner or Primary Occupant (by blood, marriage, domestic partnership or adoption) to the following degree: parent, grandparent, child, grandchild, or sibling. The limitation on Unit density in Article 15.2 applies. Ten (10) days prior notice to the Association is required.

**15.5 Additional Board Authority.** The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that Unit Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed Guest Occupants to submit proof of familial relationship, an affidavit as to absence of payment for the right to occupy the premises, or other proof that the leasing provisions of Article 16 are not being violated.

Second Amended and Restated Declaration of Condominium  
(Page 33 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**16. LEASING.** The lease of a Unit is defined as occupancy of the Unit by any person other than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, or any other exchange of value). The term "leasing" and "renting" shall be used interchangeably for the purpose of this Declaration of Condominium. The term "Tenant" and "Lessee" shall likewise be used interchangeably. All leases must be in writing. Should a Unit Owner wish to lease his Unit, he shall furnish the Association with a copy of the proposed lease and the name of the proposed Lessee, as well as all proposed Occupants. Any person occupying the Unit after initial approval shall be subject to a separate application and approval process. The Association shall have thirty (30) days from the receipt of notice and all required information within which to approve or disapprove of the proposed lease or proposed Lessees or Occupants. The Association shall give the Unit Owner written notice of its decision within said period. No individual rooms may be rented and no transient tenants may be accommodated. "Rent-sharing" and subleasing are prohibited. No Unit may be leased more than two (2) times in any calendar year, with the minimum lease term being one hundred eighty (180) days. No lease may be for a period of more than one (1) year. Leases may be renewed, subject to Board approval. This section shall apply to all Unit Owners, regardless of when the Unit was purchased or title acquired.

**16.1 Board Right of Approval.** The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. No person may occupy a Unit as a Tenant, Family member of a Tenant, Occupant, or otherwise without prior approval of the Board of Directors. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed Tenant and all proposed Occupants as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed Tenant and all proposed Occupants of a Unit, as a condition for approval.

**16.2 Tenant Conduct; Remedies.** All leases shall be on a uniform form of lease or lease addendum if so promulgated by the Association. Uniform leases, addenda and all other leases will provide, or be deemed to provide that the Tenants have read and agreed to be bound by this Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations as the same may be amended from time to time (the "Condominium Documents"). The uniform lease or addendum and other leases shall further provide or be deemed to provide that any violation of the Condominium Documents shall constitute a material breach of the lease and subject the Tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a Tenant, other Unit Occupant, Guest or Invitee fails to abide by the Condominium Documents, the Unit Owner(s) shall be responsible for the conduct of the Tenants, Occupants, Guests and Invitees and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the Tenant. The Unit Owner shall have the duty to bring his Tenant's conduct (and that of the other Unit Occupants, Guests and Invitees) into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Unit Owner fails to bring the conduct of



the Tenant into compliance with the Condominium Documents in a manner deemed acceptable by the Association, the Association shall have the authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the Tenants' noncompliance with the Condominium Documents (or the other noncompliance of other Occupants, Guests or Invitees), including without limitation the right to institute an action for eviction against the Tenant in the name of the Association in its own right, or as agent of the Unit Owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions, from the Unit Owner which shall be secured by a continuing lien in the same manner as assessments for Common Expenses, to wit, secured by a Lien for Charges. Any uniform lease or lease addendum will provide, or be deemed to provide that the Association shall have the authority to direct that all rental income related to the Unit be paid to the Association until all past due and current obligations of the Association have been paid in full, including but not limited to all past due Assessments, Charges, other monetary obligations, late fees, interest, attorneys' fees and cost and expenses of collection.

**16.3 Security Deposit.** The Board of Directors shall have the authority, as a condition of granting approval to a lease or renewal or extension thereof, to require that a prospective Lessee or Unit Owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the Common Elements or Association Property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2010) as amended from time to time.

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

**16.4.1** The person seeking approval (which shall hereinafter include all proposed Occupants) has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude or any felony;

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

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

**16.4.4** The Unit Owner or person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner;

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

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

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

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

**17.1 Forms of Ownership:**

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

**17.1.2 Co-Ownership.** Co-ownership of Units may be permitted. If the co-owners are other than husband and wife or Domestic Partners, the Board shall condition its approval upon the designation of one approved natural person as "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in Primary

Occupant will be approved in any calendar year. No time share estates may be created. "Unit Sharing" by multiple families and "Fractional Ownership" are prohibited.

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

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

## **17.2 Transfers Subject to Approval.**

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

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

Second Amended and Restated Declaration of Condominium  
(Page 37 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

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

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

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

**17.3.1 Notice to Board of Directors.**

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

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

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

**17.3.2 Certificate of Approval.**

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

Second Amended and Restated Declaration of Condominium  
(Page 38 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

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

**17.3.2.3 Approval of Occupant.** If the grantee is a corporation, partnership, trust, limited liability company, some other entity, or more than one individual who are not husband and wife or Domestic Partners, the approval of ownership by the corporation, partnership, trust, other entity, or multiple persons shall be conditioned upon approval of a Primary Occupant.

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

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

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

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

**17.4.2 Gifts; Devise; Inheritance; Familial Transfers.** If the Unit Owner giving notice has acquired or will acquire his title by gift, devise, inheritance, or succession laws

Second Amended and Restated Declaration of Condominium  
(Page 39 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

or in any other manner, and if the Board wishes to disapprove the transfer or continuance of ownership without good cause, then within thirty (30) days after receipt from the Unit Owner of the notice and information required to be furnished, the Board of Directors shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit concerned by a purchaser approved by the Board of Directors (including the Association itself) who will purchase and to whom the Unit Owner must sell the Unit upon the following terms:

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

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

**17.4.3 Disapproval for Good Cause.** Disapproval of title transfers or the continuation of ownership pursuant to this Article 17, shall be made by the Board of Directors. Only the following may be deemed to constitute good cause for disapproval:

**17.4.3.1** The application for approval on its face, or subsequent investigation thereof, indicates that the person seeking approval (which shall hereinafter include all proposed Occupants) intends to conduct himself in a manner inconsistent with the Condominium Documents;

**17.4.3.2** The person seeking approval has been convicted of a crime involving violence to persons, a crime demonstrating dishonesty or moral turpitude, any felony, or a sexual offense of any nature;

**17.4.3.3** The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures, or bad debts;

**17.4.3.4** The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other

social organizations or associations, or by his conduct in this Condominium or other residences as a Tenant, Occupant, Guest or Owner;

**17.4.3.5** The person seeking approval failed to provide the information, fees or appearance required to process the application in a timely manner;

**17.4.3.6** The Unit Owner requesting the transfer has had fines assessed against him or her which have not been paid; or,

**17.4.3.7** All Assessments and other Charges against the Unit have not been paid in full.

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

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

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

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

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

**18.1 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.

Second Amended and Restated Declaration of Condominium  
(Page 41 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**18.2 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."

**18.3 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.

**18.4 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.

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

**18.6 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.

**18.7 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.

## **19. TERMINATION.**

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

Second Amended and Restated Declaration of Condominium  
(Page 42 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707



**19.1.1 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.

**19.1.2 Optional Termination.** Except as provided in Article 19.1.1, 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.

**19.1.3 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.

**19.1.4 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.

**19.2 Procedures for Termination and Sale.** The termination of the Condominium via either of the methods set forth in 19.1.1 through 19.1.3 herein shall be as set forth in Section 718.117(4) – (20), Florida Statutes (2010), as amended from time to time.

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

Second Amended and Restated Declaration of Condominium  
(Page 43 of 48)

## **20. CONDEMNATION.**

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

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

**20.3 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.

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

**20.5 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.

**20.5.1 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.

**20.5.2 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.

**20.5.3 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.

Second Amended and Restated Declaration of Condominium  
(Page 44 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**20.6 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:

**20.6.1 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).

**20.6.2 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.

**20.6.3 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.

**20.7 Taking of Common Elements.** Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in 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.

**20.8 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.

## **21. COMPLIANCE AND DEFAULT.**

**21.1 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:

**21.1.1** The Association;

**21.1.2** A Unit Owner; or

Second Amended and Restated Declaration of Condominium  
(Page 45 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**21.1.3** 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.

**21.2 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.

**21.3 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.

**21.4 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.

**21.5 Notice of Lien or Suit.**

**21.5.1 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.

**21.5.2 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.

**21.5.3 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.

## **22. MISCELLANEOUS PROVISIONS.**

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

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

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

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

**22.5 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.

**22.6 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.

**22.7 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.

**22.8 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.

Second Amended and Restated Declaration of Condominium  
(Page 47 of 48)

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707

**22.9 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.

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

ACTIVE: 3077597\_7

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

LAW OFFICES  
BECKER & POLIAKOFF, P.A.  
12140 CARISSA COMMERCE COURT • SUITE 200 • FORT MYERS, FL 33966  
TELEPHONE (239) 433-7707