

NEWCASTLE CONDOMINIUM ASSOCIATION

1. 1ST AMENDED DECLARATION OF CONDOMINIUM  
( WITH FURTHER AMENDMENTS THRU 2017)

2. 1ST AMENDED BY-LAWS OF CONDOMINIUM  
( WITH FURTHER AMENDMENTS THRU 2017)

3. 1ST AMENDED ARTICLES OF INCORPORATION  
FOR CONDOMINIUM

(NOTE ITEMS 1, AND 2 ARE NON-COLLIER COUNTY LAND RECORDED VERSIONS)

4. RULES AND REGULATIONS OF CONDOMINIUM  
( WITH CHANGES THRU 2016)

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1ST AMEMDED NEWCASTLE DECLARATION OF CONDOMINIUM  
(WITH FURTHER AMENDMENTS THRU JANUARY 2017)  
NOTE NON-COLLIER COUNTY LAND VERSION

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**NOTE:** SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING DECLARATION OF CONDOMINIUM.

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

OF

NEWCASTLE, A CONDOMINIUM

On December 8, 1989, the original Declaration of Condominium of Newcastle, a Condominium (hereinafter the "Condominium") was recorded in Official Record Book 1489, Page 528, Public Records of Collier County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended in part and is restated in its entirety.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Amended and Restated Declaration of Condominium is made by Newcastle Condominium Association, Inc., a Florida corporation not for profit, hereinafter the "Association". The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit or any other interest in the condominium property, or the lease, occupancy, or use of any portion of a unit or the condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.
2. **NAME AND ADDRESS:** The name of this Condominium is Newcastle, a Condominium, and it is located at Squire Circle and Landover Circle, Naples, Florida 33942.
3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration (the "Land") is legally described as follows: as legally described in Exhibit "A-1" and "A-2" to the original Declaration; which Exhibit is hereby incorporated by reference.
4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (the "Condominium Act"), unless the context requires otherwise.
  - 4.1 **"Apartment"** has the same meaning as the term "unit" as defined in the Condominium Act.
  - 4.2 **"Apartment Owner" or "Owner"** has the same meaning as the term "unit owner" as defined in the Condominium Act, except that for purposes of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word "owner" refers to the primary occupant and not the record owner.
  - 4.3 **"Assessment"** shall mean and refer to a share of the funds required for the payment of common expenses which from time to time is assessed against the units.
  - 4.4 **"Association"** shall mean and refer to Newcastle Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

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4.5 "Association Property" shall mean and refer to all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

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

4.7 "Condominium Documents" shall mean and include this Declaration and all recorded exhibits hereto, as amended from time to time.

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

- (A) One natural person.
- (B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
- (C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

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

4.10 "Guest" shall mean and refer to any person who is not the unit owner or a lessee or a member of the owner's or lessee'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.

4.11 "Institutional Mortgage" shall mean and refer to the mortgagee (or its assignee) of a mortgage against a condominium parcel; which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.12 "Lease" shall mean and refer to the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

4.13 "Limited Common Elements" shall mean and include those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.14 "Master Association" shall mean and refer to Berkshire Lakes Master Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the common properties within Berkshire Lakes, as described in the Master Documents.

4.15 "Master Declaration" or "Master Documents" shall mean and refer to the "Declaration of Covenants, Conditions, Restrictions and Easements for Berkshire Lakes", as recorded in Official Record

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Book 1339, Page 234, Public Records of Collier County, Florida, including all recorded exhibits thereto and the Articles of Incorporation and By-Laws of the Master Association, all as amended from time to time.

4.16 "Occupy", when used in connection with a unit, shall mean and refer to the act of staying overnight in a unit. "Occupant" shall mean and refer to a person who occupies a unit.

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

4.18 "Primary Occupant" shall mean and refer to the natural person approved for occupancy when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

4.19 "Rules and Regulations" shall mean and refer to those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.

4.20 "Voting Interest" shall mean and refer to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are two hundred seventy eight (278) units, so the total number of voting interests is two hundred seventy eight (278) votes.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached to the original Declaration as Exhibit "B", and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification letters and numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, said exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

5.2 Unit Boundaries. Each unit shall include that part of the building that lies within the following boundaries:

(A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the unit.

(2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.

(B) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the plasterboard walls bounding the unit as shown in Exhibit "B" hereto, extended to their intersections with each other and with the upper and lower boundaries.

(C) Interior Walls. No part of the non-structural interior partition walls within an apartment shall be considered part of the boundary of a unit.

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- (D) Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and their frameworks thereof. Therefore, windows, doors, screens and all framings, casings and hardware therefor, are excluded from the unit.
- (E) Exclusions from Units. Not included in the units are:
- (1) All pipes, ducts, vents, wires, conduits and other facilities, equipment or fixtures running through any interior wall, or horizontal or vertical portion of a unit for the furnishing of utility services, heating, cooling or ventilation to units, common elements or limited common elements.
  - (2) All spaces and improvements lying beneath the undecorated or unfinished inner surface of the perimeter walls and floors, and above the lowest horizontal plane of the upper structural element of each unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of 5.2(D) above shall control over Exhibit "B". Nothing herein shall be construed as purporting to change the boundaries of the units as they were provided for in the original Declaration.

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

6.1 Shares of Ownership. The Condominium contains two hundred seventy eight (278) units. The owner of each unit shall also own a one/two hundred seventy eighth (1/278) undivided share in the common elements and the common surplus.

6.2 Appurtenances to Each Unit. The owner of each unit shall have certain rights and own a certain interest in the condominium property, including without limitation the following:

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D", respectively.
- (C) Membership in Berkshire Lakes Master Association, Inc., with all rights and obligations provided in the Master Documents.
- (D) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.
- (E) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (F) Other appurtenances as may be provided in this Declaration and its exhibits.

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Each unit and its appurtenances constitutes a "condominium parcel".

**6.3 Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided. The use of the units, common elements and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Board of Directors, as provided in Section 7 of the Bylaws.

**6.4 Other Reserves.** In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for contingencies, operating expenses, repairs, minor improvements or deferred maintenance. The purpose of these reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. In order to fund all or a portion of these additional reserve accounts, the Board by resolution may establish a re-sale capital assessment of up to \$500.00 to be paid by the transferee upon acquiring the unit. These funds may be spent for any purpose approved by the Board.  
(Amended 1/19/2017)

**7. COMMON ELEMENTS; EASEMENTS:**

**7.1 Definition.** The term "common elements" means all of the property submitted to condominium ownership that is not within the unit boundaries set forth in Section 5 above. The common elements include without limitation the following:

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

**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. 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 unit owners with respect to such easements.

- (A) **Utility and other Easements.** The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant access easements or relocate any existing access easements in any portion of the common elements or association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing

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easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

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

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

8. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant, are as described in this Declaration and its recorded exhibits. The following common elements are hereby designated as limited common elements:

- (A) Parking Spaces. There are shown, on the attached survey and plot plan as limited common elements for the exclusive use of specific units, certain designated parking spaces, some of which are covered and others which are uncovered. Each of the three (3) bedroom units is assigned the exclusive use of a covered parking space and some of the two (2) bedroom units are assigned the exclusive use of a covered parking space. Each of the remaining two (2) bedroom units is assigned the exclusive use of an uncovered parking space. The cost of maintenance of all the parking spaces and coverings shall be a common expense. No unit is or may be assigned or acquire more than one (1) parking space, whether covered or uncovered.
- (B) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit, except as otherwise provided in Section 11.3 below.
- (E) Balconies, Entryways and Lanais. Any balcony, entryway or lanai attached to and serving exclusively a unit shall be a limited common element. The unit owner shall be responsible

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for day-to-day cleaning and care, but all painting and maintenance of the exterior surfaces and structures of the building shall be the responsibility of the Association and shall be a common expense. No balcony, entryway or lanai may be carpeted, covered or enclosed in any way without the prior written approval of the Board of Directors. The maintenance, repair, replacement and insurance of such approved carpeting, covering or enclosure shall be the responsibility of the unit owner. No carpeting of any kind or description may be installed over or affixed to concrete floors exposed to the elements.

- (F) Others. Any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware and framings therefor.

8.2 Exclusive Use; Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated therefrom.

9. ASSOCIATION: The operation of the Condominium is by Newcastle Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. A copy of the Amended and Restated Articles of Incorporation of the Association which is attached as Exhibit "C".

9.2 Bylaws. The Bylaws of the Association shall be the Amended and Restated Bylaws attached as Exhibit "D", as they may be amended from time to time.

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

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

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or the condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner has no authority to act for the Association by reason of being a unit owner.

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

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elements or association property. The Association has the power to enter into agreements, to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, whether or not the lands or facilities are contiguous to the lands of the Condominium.

9.7 **Official Records.** The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 **Purchase of Units.** The Association has the power to purchase one or more units in the Condominium, and to own, lease, mortgage, or convey them; such power to be exercised by the Board of Directors.

9.9 **Acquisition of Property.** The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 **Disposition of Property.** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, conveyed leased or otherwise encumbered or disposed of by the same authority pursuant to which it may be acquired under Sections 9.8 and 9.9 above.

9.11 **Roster.** The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the unit owners. A copy of the roster shall be made available to any member upon request.

9.12 **Limitation on Liability.** Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to individual unit owners for personal injury or property damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

9.13 **Member Approval of Certain Litigation.** Notwithstanding any other provisions of the condominium documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which owners are obligated to pay;
- (C) the enforcement of the use and occupancy restrictions applicable to the Condominium;
- (D) the enforcement of any restrictions on the sale, lease and other transfer of units;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) filing a compulsory counterclaim.

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10. **ASSESSMENTS AND LIENS:** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "regular" assessments for each unit's share of the common expenses as set forth in the annual budget, and "special" assessments for unusual, nonrecurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts, other than for common expenses, which are properly chargeable against such unit. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws, and as follows:

10.1 **Common Expenses.** Common expenses include the expenses of the operation, maintenance, repair, replacement, protection or insurance of the common elements and association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors contracts for pest control within units or basic cable television programming services in bulk for the entire Condominium, the cost of such services shall be a common expense.

10.2 **Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

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

10.4 **Who is Liable for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the unit owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below as to certain first mortgagees, whenever title to a condominium parcel is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and which remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5 **No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees.

10.6 **Application of Payments; Failure to Pay; Interest.** Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose and charge a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date for payment established in the Bylaws or otherwise set by the Board of Directors. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorneys fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

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**10.7 Acceleration.** If any special assessment or installment of a regular assessment as to a unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Condominium Act, or may be sent separately.

**10.8 Liens.** The Association has a lien on each condominium parcel securing payment of past due assessments, and interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether incurred prior to, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

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

**10.11 Certificate As To Assessments.** Within fifteen (15) days after request therefor by a unit owner or unit mortgagee, the Association shall provide a certificate (sometimes referred to as an "octoppel letter") stating all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel. Any person other than the owner who relies upon such certificate shall be protected thereby.

**11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS:** Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

**11.1 Association Maintenance.** The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Rough plumbing.

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- (C) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (D) The exterior surface of the entrance doors to the units.
- (E) All exterior building walls.
- (F) Replace light bulbs in entryways between doors to individual units.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein, nor shall the Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the owner.

**11.2 Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements within his own unit, whether ordinary or extraordinary, and certain limited common elements. The owner's responsibilities include, without limitation:

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The interior side of the entrance door to the unit.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures and outlets (including connections), switches, valves, drains located partially or entirely within the unit or serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All portions of the air conditioning, and heating equipment, including without limitation, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit.
- (L) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (M) All interior, partition walls which do not form part of the boundary of the unit.

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- (N) All drywall, lath, plasterboard, furring and similar materials in the perimeter walls and ceilings of the unit.

11.3 Other Unit Owner Responsibilities. The unit owner shall also have the following responsibilities:

- (A) Balconies, Entryways and Landings. Where a limited common element consists of a balcony, entryway or land area, the unit owner who has the right of exclusive use of said balcony, entryway or porch area shall be responsible for the day-to-day cleaning and care of the interior surfaces of the walls, floor and ceiling bounding said area, if any; and any fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs other than such replacements which are the responsibility of the Association. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs and the light fixtures thereon. The Association is further responsible for the replacement of light bulbs in the fixtures located in the common entryways between units.
- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (C) Flooring. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms, hallways or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.
- (D) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.
- (E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the cost of repairing any damage to the common elements resulting from such modifications, installations or additions.
- (F) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) 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.

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**11.4 Appliance Maintenance Contracts.** If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the total voting interest in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

**11.5 Alteration of Units or Common Elements by Unit Owners.** No owner shall make, cause or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval.

Uncovered parking spaces may be converted to covered parking spaces (carports), with prior approval of the Board of Directors, by means of addition to an existing covered parking structure or by construction of a new covered parking structure which converts a minimum of three (3) parking spaces from uncovered to covered. All unit owners whose parking spaces are being converted from uncovered to covered must consent to the conversion. The expense of construction of said covered parking structures shall be borne only by the unit owners whose spaces are being converted. Thereafter, the maintenance of the covered parking structures shall be a common expense. Such covered parking structures shall be substantially similar in appearance to the existing covered parking structures, shall comply with all applicable governing construction guidelines adopted by the Board and shall receive prior written approval of the ARC of the Master Association.

**11.6 Hurricane Shutters.** The Board of Directors shall adopt hurricane shutter specifications, which shall comply with applicable building codes and may address color, style and other factors deemed relevant by the Board. The Board shall not refuse to approve the installation or replacement of hurricane shutters by an unit owner if the installation conforms to the specifications approved by the Board.

**11.7 Alterations and Additions to Common Elements and Association Property.** The protection, maintenance, repair, insurance and replacement of the common elements and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$10,000.00 in the aggregate in any calendar year without prior approval of at least a majority of the voting interests, voting in person or by proxy, at a meeting called for the purpose of considering such alterations or additions. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

**11.8 Architectural and Aesthetic Control.** No building, pool or other structure or other improvement shall be erected or materially altered, nor shall any grading, excavation, landscaping or change to the exterior of the Condominium be performed without the prior written approval of the Architectural Review Committee (the "ARC") of the Master Association. In obtaining written approval, the person applying shall comply with all applicable requirements and procedures of the Master Documents.

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

**11.10 Negligence; Damage Caused by Condition in Unit.** The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association, as provided in Section 8.1), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from the owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

**11.11 Association's Access to Units.** The Association has the irrevocable right of access to the units for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to the common elements or one or more units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety of residents may be endangered. The exercise of the Association's rights of access to the unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, which prevents access when the unit is unoccupied, unless the unit owner provides the Association with a key. If the Association is not provided with a key to the unit, the owner shall pay all costs incurred by the Association in gaining entrance to his unit, and also shall be responsible for any damage done to his unit in gaining entrance thereto, and shall also be liable for any damage resulting from delay in gaining entrance to his unit caused by the unavailability of a key.

**11.12 Pest Control.** The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control service provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

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12. USE RESTRICTIONS: The use of the condominium property shall be in accordance with the following provisions:

12.1 Units. Each unit shall be occupied by only one family at any time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use.

12.2 Occupancy in Absence of Owner. If the owner and his family who permanently reside with him are absent from the unit and are not occupying it, and the unit has not been leased, the owner may permit his unit to be occupied by his guests only in accordance with the following:

- (A) Any one person who is the parent or child of the unit owner or of the unit owner's spouse, if any, may occupy the unit in the absence of the owner for a period not to exceed fifteen (15) days. That person's spouse and children, if any, may accompany him. The total number of occasions for occupancy by all guests combined under this paragraph shall be limited to four (4) in any twelve (12) month period, with a maximum aggregate total of sixty (60) days.
- (B) House guests not included within 12.2(A) are permitted for only one (1) family occupancy in the unit owner's absence and then only with the proviso that the family consist of no more than four (4) persons. Such guests may stay not longer than two (2) weeks and the total number of occasions for this type of guest occupancy in any unit shall be limited to three (3) in a twelve month period.
- (C) The Board of Directors may require guests under this Section to be registered in advance of their arrival.

12.3 Exceptions. Upon prior written application by the unit owner, the Board of Directors may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be construed as a precedent for later exceptions.

12.4 Occupancy When Owner is Present. There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the unit together with the unit owner, except that the number of overnight guests shall be limited to (6) guests in the two bedroom units and (8) guests in the three bedroom units.

12.5 Minors. There are no age restrictions for occupants of units. All occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents.

12.6 Pets. The owner of each unit may keep one (1) small breed pet, of a normal domesticated household type (such as a cat or dog) in the unit. The pet must be carried under the owner's arm or be leashed at all times while on the condominium property outside of the unit. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Condominium. No pets of any kind are permitted in leased units. No reptiles, rodents, amphibians, poultry or livestock may be kept in the Condominium.

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**12.7 Nuisances.** No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly, immoral, improper, offensive or unlawful way. Further, no owner shall use the common or limited common elements of the condominium, or maintain anything thereon, in any manner that constitutes or causes unreasonable annoyance or nuisance to other residents, and their guests and invitees, or in a manner that would otherwise violate the Associations' rules or this Declaration. It is the intent of the section 12.7 that any personal conduct of an owner or lessee, or their family, guest and invitees, that is immoral, offensive harassing or disorderly, shall constitute nuisance. In the event of a dispute or question as to what may be or become unsightly or a nuisance or unreasonable annoyance, such a dispute or question shall be submitted in writing to the Board whose decision shall be dispositive of such dispute or question. The use of each unit and the common elements shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. Should an Owner or any Owner's lessee(s), family member(s), guest(s) or invitee(s) fail to correct his or her nuisance conduct after written warning from the Board, the Owner shall be responsible for legal fees and costs incurred by the Association to compel compliance, including without limitation pre-litigation notices or demands, which shall be a special charge and assessment against the unit as further provided in Section ten (10) of the Declaration. (Amended 1/21/2016)

**12.8 Signs.** No person may post or display "For Sale", "For Rent", "Open House" or other similar signs anywhere within the Condominium or on the condominium property, except that such signs may be permitted under limited circumstances if permitted by the ARC of the Master Association and upon prior approval of the Board of Directors, and in accordance with the guidelines established by the ARC and by resolution of the Board of Directors.

**12.9 Parking Vehicles.** No vehicle prohibited by the terms and provisions of the Master Declaration shall be permitted on the condominium property. All vehicles must be parked on a paved parking surface or within a carport. Parking on the grass or along the roadways and streets on the condominium property is prohibited. Parking of commercial vehicles (including any vehicles with commercial lettering thereon) other than those temporarily present on the condominium property for a business purpose, boats, trailers, semi-trailers, boat trailers, campers, recreation vehicles (RVs), travel trailers, motorcycles, mobile homes, motor homes, busses, tractors, pick up trucks in excess of 3/4 ton, and other such similar vehicles are prohibited on the condominium property. The repair of vehicles on the condominium property is prohibited, except in the case of an emergency.

**12.10 Use of Common Elements.** Common hallways, stairways and other common elements, including but not limited to walkways and entryways, shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways, stairways and entryways shall be used only for the purpose intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or for the placing, using, storing, or maintaining of any household items or personal property, such as, but not limited to, benches, patio furniture, tables, chairs and recliners. Temporary Storage of bicycles and baby carriages, when in use, may be allowed under guidelines adopted by the Board of Directors from time to time, but in any event no permanent storage of these items is allowed. (Amended 1/21/2016)

**13. LEASING OF UNITS:** In order to foster a stable residential community and prevent a transient atmosphere, the leasing of units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person.

**13.1 Procedures.**

(A) **Notice by the Unit Owner.** An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease, together with the name and address of the proposed lessee(s), a fully executed copy of the proposed lease, and such other information as the Board may reasonably require including, without limitation a written application, vehicle information, and criminal background search. The Board may require a personal interview with any lessee and his spouse, if any, as a condition of approval. (Amended 1/19/2017)

(B) **Board Action.** After the required notice and all information or interviews requested have been provided, the Board shall have twenty (20) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

**(C) Disapproval** A proposed lease may be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made and shall be void regardless of any agreement between the owner and prospective lessee. Owners who allow a lessee to occupy a unit without approval from the Board as provided in this section are subject to fines, suspensions and arbitration proceedings and shall be responsible for the Association's legal expenses so incurred. Lessees who occupy a unit without Board approval are also subject to fines, suspensions, arbitration proceedings and/or eviction, and shall be jointly responsible with the owner for legal expenses so incurred. Appropriate grounds for disapproval shall include the following (Amended 1/19/2017)

1. the unit owner is delinquent in the payment of assessments or other charges owed to the Association at the time the application is considered; (Amended 1/19/2017)
2. the unit owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his unit; (Amended 1/19/2017)
3. the real estate company or rental agent handling the leasing transaction on behalf of the unit owner has a history of submitting inadequate or incomplete lessee applications or entering into leases without prior Association approval; (Amended 1/19/2017)
4. the application on its face indicates that the person(s) seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium; (Amended 1/19/2017)
5. the prospective lessee ( or any occupant residing with the prospective lessee) has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, a felony involving minors or a sexual offense, or a felony demonstrating dishonesty, theft or moral turpitude; provided, however, that the Board shall have the option to approve a lessee or occupant who has been convicted of a felony listed above if the person's civil rights have been fully restored by the State of Florida for at least (5) years and there are no other felony convictions on the person's criminal record; (Amended 1/19/2017)
6. the lessee during previous occupancy in Newcastle or in another residence, has a history of disregarding the community rules, restrictions and/or policies; (Amended 1/19/2017)
7. the prospective lessee gives false or incomplete information to the Board as part of the application procedure; (Amended 1/19/2017)
8. the required transfer fees, application fees and/or security deposit is not paid; (Amended 1/19/2017)
9. the owner fails to give proper notice to the Board of Directors of his intention to lease his unit as required by this section 13.1. (Amended 1/19/2017)

**(D) Failure to Give Notice or Obtain Approval** If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with seven (7) days' notice under Section 83.56(2)(a), Florida Statute without securing consent to such eviction from the unit owner. (Amended 1/19/2017)

**(E) Applications; Assessments** Applications for authority to lease shall be made to the Board of Directors on such forms and include such terms and lease addendums as the Board may provide from time to time. The legal responsibility for paying condominium assessments may not be delegated to the lessee. (Amended 1/19/2017)

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- (F) **Committee Approval.** To facilitate approval of leases proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members.

**13.2 Term of Lease and Frequency of Leasing.** No unit may be leased more often than four (4) times in any twelve (12) month period and no unit shall be leased for a term of less than thirty (30) days. The first day of occupancy under the tenancy shall determine when the lease term commences. No lease may be for a period of more than (1) year, and any extension or renewal of a lease shall be treated as a new lease such that the Board of Directors has the right (but not the obligation) to require notice and approval of such extended or renewed lease in accordance with Section 13.1 above. No subleasing or assignment of lease rights by the lessee is allowed for any portion of the unit.  
(Amended 1/19/2017)

**13.3 Exceptions** (Removed by Amendment 1/19/2017)

**13.4 Occupancy During Lease Term.** No one but the lessee, his family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the unit. The total number of overnight occupants of a leased unit is limited to two (2) persons per bedroom.

**13.5 Occupancy in Absence of Lessee.** If a lessee absents himself from the unit for any period of time during the lease term, his family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests subject to all the restrictions in Sections 12 and 13.4 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the unit.

**13.6 Use of Common Elements and Association Property.** To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

**13.7 Regulation by Association.** All of the provisions of the Condominium Act, the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium Act and the condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not. The association's right to terminate a lease and evict shall be under Section 83.56(2)(a), Florida Statutes, and in such event Association shall have a right of action for possession under Section 83.59, Florida Statute. Should the Association exercise such rights to evict and take possession, it shall do so without any liability to the owner and the owner hereby releases and holds the Association harmless for any loss, damage or other liability incurred as a result of the Association pursuing the above remedies.  
(Amended 1/19/2017)

**13.8 Fees and Deposits Related to the Lease of Units.** Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a pre-set fee for processing the application; such fee not to exceed the maximum amount allowed by law. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any security or other deposits that are authorized by the Condominium Act as amended from time to time.

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

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**14.1 Forms of Ownership:**

- (A) One Person. A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (B) Two or More Persons. A unit may be owned by two or more natural persons. However, the intent of this provision is to allow flexibility in estate, tax or financial planning, and not to create circumstances where the unit may be used as a short-term transient accommodations for multiple families. If the co-owners are other than husband and wife, 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 were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (C) Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership 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 short-term transient accommodations for several individuals or families. The approval of a trustee, or corporation, partnership or other entity as a unit owner shall be conditioned upon designation by the owner of one natural person to be the "primary occupant". The use of the unit by other persons shall be as if the primary occupant were the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 14. No more than one such change will be approved in any twelve (12) month period.
- (D) Designation of Primary Occupant. Within thirty (30) days after the effective date of this provision, each owner of a unit which is owned in the forms of ownership stated in preceding subsections 14.1(B) and (C) shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.
- (E) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under 14.2 below. In that event, the life tenant shall be the only Association member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval required of association members may be given by the life tenant alone, and the 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 under Section 14.1(B), above.

**14.2 Transfers.**

- (A) Sale or Gift. No unit owner may dispose of a unit or any ownership interest in a unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors under

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Section 14.3(A)(2) below. The approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.

- (C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit before being approved by the Board of Directors under the procedures outlined in Section 14.3 below.
- (D) To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution appoint and delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) members. The Chairman of the committee shall be a Board member and (if that Board member is not the President or a Vice President) shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

14.3 Procedures.

(A) Notice to Association.

- (1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least thirty (30) days prior to the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a condition of approval.
- (2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights unless and until approved by the Board, but may sell or lease the unit following the procedures in this Section or Section 13, respectively.
- (3) Demand. With the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the unit at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.
- (4) Failure to Give Notice. If no notice is given, the Board of Directors, at its election, may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

- (B) Board Action. Within fifteen (15) days after receipt of the required notice and all information or interviews requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated

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In a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval.

- (1) With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:
- (a) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
  - (b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;
  - (c) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
  - (d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;
  - (e) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in this Condominium as a tenant, unit owner or occupant of a unit;
  - (f) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or has provided false information during the application process; or
  - (g) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.
- (2) Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 14.3(A)(3), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner (hereafter "the seller") the name of an approved purchaser who will purchase the unit at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the seller and the other by the Association. The cost of the appraisals,

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and all other closing costs in cases where no sales contract is involved, shall be shared equally by the buyer and seller, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and condominium assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

- (3) If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand the Board shall issue a Certificate of Approval.

**14.4 Exception.** The provisions of Sections 14.2 and 14.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure.

**14.5 Unapproved Transfers.** Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

**14.6 Fees and Deposits Related to the Sale of Units.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a unit, the Association shall charge the owner a predetermined fee for processing the application, such fee not to exceed the maximum amount allowed by law. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

**15. INSURANCE.** In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

**15.1 By the Unit Owner.** Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

**15.2 Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

**15.3 Required Coverage.** The Association shall maintain adequate insurance covering all of the buildings and the common elements as well as all association property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

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- (A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.
- (B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- (C) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.
- (D) Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- (E) Statutory Fidelity Bond. The Association shall maintain fidelity bonding in at least the amount required by law.

15.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include:

- (A) Flood insurance.
- (B) Broad Form Comprehensive General Liability Endorsement.
- (C) Directors and Officers Liability.
- (D) Medical Payments.
- (E) Leakage, seepage and wind-driven rain.
- (F) Commercial Umbrella Liability Contract.

15.5 Description of Coverage. A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection by unit owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

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- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
- (B) Units. Proceeds on account of damage within the units shall be held in undivided shares based on the prorated amount of damage within each damaged unit as a percentage of the total damage within all units.
- (C) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against a unit or units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The foregoing notwithstanding, insurance proceeds on account of any NFIP flood insurance policy on an individual unit purchased by the Association or by a unit owner shall be used only to repair or rebuild the unit to which the respective policy applies and that unit's appurtenant share of the common elements, and no other unit owner or unit may directly benefit from said proceeds. If the Condominium is not to be restored or rebuilt, the proceeds shall accrue to the benefit of the respective unit owner and his mortgagee(s), if any.

15.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

- (A) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.
- (B) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them.

15.9 Association as Agent. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

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

16.1 Damage to Units. Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage, less the deductible, shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair.

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

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

16.3 **"Very Substantial" Damage**. As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby one-half (1/2) or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur then:

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
- (B) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:
  - (1) If the insurance proceeds and reserves available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that no special assessment will be required, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general types of units, in either of which cases the Condominium shall be terminated.
  - (2) If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the estimated cost thereof so that a special assessment will be required, then unless two-thirds (2/3rds) of the total voting interests vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If two-thirds (2/3rds) of the total voting interests approve the special assessment, the Board of Directors shall levy such assessment and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.
- (C) If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

16.4 **Application of Insurance Proceeds**. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the

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Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.7(C) above.

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

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

**17. CONDEMNATION:**

**17.1 Deposit of Awards with Association.** The taking of all or any part of the condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

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

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

**17.4 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.

**17.5 Units Reduced but Habitable.** If the condemnation 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:

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- (A) 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 paid by the owner of the unit.
- (B) 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.
- (C) 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.

17.6 Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so 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 affected in the Condominium:

- (A) Payment of Award. The fair market value of the unit 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).
- (B) 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 some or all unit owners in a manner approved by the Board of Directors.
- (C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
- (E) Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

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

17.8 Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration in accordance with Sections 17.5 and 17.6 above. Such amendment need be approved only by the owners of a majority of the units. The consent of lien holders is not required for any such amendment.

18. TERMINATION: The Condominium may be terminated in the following manner:

18.1 Agreement. The Condominium may be terminated at any time by written agreement of the owners of at least ninety percent (90%) of the units, and the Primary Institutional Mortgagee. Termination incident to merger shall be accomplished as provided in Section 22.9 below.

18.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 18.3, and it is not decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

18.3 General Provisions. Upon termination, the former unit owners shall become the owners, as tenants in common, of all condominium and association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other assets of the Association which he may become entitled to receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association, executed with the formalities of a deed, and certifying as to the facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.

18.4 New Condominium. The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

18.5 Partition; Sale. Following termination, the former condominium property and association property may be partitioned and sold upon the application of any unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests agree to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

18.6 Last Board. The termination of the Condominium does not, by itself, terminate the Association. The members of the last Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association.

18.7 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

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**19. ENFORCEMENT:**

**19.1 Duty to Comply; Right to Sue.** Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the condominium documents and the rules and regulations of the Association. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

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

**19.2 Waiver of Rights.** The failure of the Association or any member to enforce a right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act or the condominium documents.

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

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

**20. RIGHTS OF MORTGAGEES:**

**20.1 Approvals.** Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8.

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

**20.3 First Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the mortgagee shall be liable only for such share of the common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due

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prior to the mortgagee's acquisition of title as the mortgagee shall be required to pay under the Condominium Act as amended from time to time. No acquirer of title to a condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

**20.4 Redemption.** If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

**20.5 Right to Inspect Books.** The Association shall make available to institutional mortgagees requesting same current copies of the condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

**20.6 Financial Statement.** Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

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

- (A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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

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

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

**21.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.12 of the Bylaws.

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

**21.5 Proviso.** No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and all record owners of mortgages on such unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners.

**21.6 Enlargement of Common Elements.** The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through amendment of Exhibits "A" and "B" to this Declaration. The amendment must be approved by the procedure set forth in Section 21.5 above. The amendment divests the Association of title and vests title in the unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the units.

**21.7 Correction of Errors.** If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Condominium Act.

## 22. MISCELLANEOUS

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

**22.2 Applicable Statutes.** The validity, application and construction of this Declaration and its recorded exhibits shall be governed by the Laws of Florida, particularly the Florida Condominium Act, so it exists on the date hereof.

**22.3 Conflicts.** If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.

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

**22.5 Exhibits.** There is hereby incorporated within this Declaration any materials contained in the exhibits hereto which, under the Condominium Act, are required to be part of the Declaration.

**22.6 Singular, Plural and Gender.** Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.

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PAGE

22.7 Headings. The headings used in the condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

**EXHIBITS TO DECLARATION**

The following exhibits were recorded on December 6, 1989, together with the Declaration of Condominium of Newcastle, a Condominium, by Declaration created on the same date, in Official Record Book 1489, Pages 528 through 596 inclusive, Public Records of Collier County, Florida. These exhibits, and any and all amendments thereto, are hereby incorporated by reference as exhibits to the attached Amended and Restated Declaration of Condominium.

EXHIBIT "A" - LEGAL DESCRIPTION AND SURVEY OF CONDOMINIUM PROPERTY  
EXHIBIT "B" - SURVEY

In addition, the following Exhibits to the original Declaration are completely amended and restated, and the Restatements are attached hereto and recorded herewith:

EXHIBIT "C" - ARTICLES OF INCORPORATION OF ASSOCIATION  
EXHIBIT "D" - BYLAWS OF THE ASSOCIATION

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HOLLY A. HARMON, P.A. ■ Attorney at Law ■ 1100 Fifth Avenue South, Suite 201, Naples, FL 33940

1ST AMEMDED NEWCASTLE BY-LAWS OF CONDOMINIUM  
(WITH FURTHER AMENDMENTS THRU JANUARY 2017)  
NOTE NON-COLLIER COUNTY LAND VERSION

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**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE BYLAWS. FOR PRESENT TEXT SEE EXISTING BYLAWS.**

**AMENDED AND RESTATED BYLAWS  
OF  
NEWCASTLE CONDOMINIUM ASSOCIATION, INC.**

1. **GENERAL.** These are the Amended and Restated Bylaws of Newcastle Condominium Association, Inc., hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a condominium pursuant to the Florida Condominium Act. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 **Principal Office.** The principal office of the Association is at Squire Circle and Lendover Circle, Naples, Florida 33942.

1.2 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 **Definitions.** The definitions set forth in Section 4 of the Declaration of Condominium shall also apply to terms used in these Bylaws.

2. **MEMBERS.**

2.1 **Qualifications.** The members of the Association shall be the record owners of legal title to the units. In the case of a unit subject to an agreement for deed, the purchaser in possession shall be deemed the owner of the unit for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events.

- (A) Recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.
- (B) Approval by the Board of Directors as provided for in Section 14 of the Declaration of Condominium.
- (C) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.
- (D) Delivery to the Association, if required, of a written designation of a primary occupant.

2.2 **Voting Interests.** The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of possible votes (the "voting interests") is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. If a unit is owned by one natural person, his right to vote shall be established by the record title to the unit. If a unit is owned jointly by two or more natural persons, that unit's vote may be cast by any one of the record owners. If two or more owners of a unit do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a unit is not a natural

person, the vote of that unit shall be cast by the unit's primary occupant designated as set forth in Section 14.1 of the Declaration of Condominium.

**2.3 Approval or Disapproval of Matters.** Whenever the decision or approval of a unit owner is required upon any matter, whether or not the subject of an Association meeting, such decision may be expressed by any person authorized to cast the vote of such unit at an Association meeting as stated in Section 2.2 above, unless the joinder of all record owners is specifically required.

**2.4 Change of Membership.** Following written approval of the Association, as elsewhere required herein, a change of membership in the Association shall be established by the new member's membership becoming effective as provided in 2.1 above. At that time the membership of the prior owner shall automatically terminate.

**2.5 Termination of Membership.** The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Condominium during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

### **3. MEMBERS' MEETINGS; VOTING.**

**3.1 Annual Meeting.** There shall be an annual meeting of the members in each calendar year. The annual meeting shall be held in Collier County, Florida, each year during the month of January at a day, place and time designated by the Board of Directors, for the purpose of transacting any business duly authorized to be transacted by the members. During the annual meeting all ballots cast in the annual election of Directors shall be counted and results announced.

**3.2 Special Members' Meetings.** Special members' meetings must be held whenever called by the President or by a majority of the Directors, and may also be called by members having at least ten percent (10%) of the voting interests. The business at any special meeting shall be limited to the items specified in the notice of meeting.

**3.3 Notice of Meetings; Waiver of Notice.** Notice of all members' meetings must state the time, date, and place of the meeting, and include an agenda for the meeting. The notice must be mailed to each member at the address which appears on the books of the Association, or may be furnished by personal delivery. The member is responsible for informing the Association of any change of address. The notice of all members' meetings must be mailed or delivered at least fourteen (14) days before the meeting. If ownership of a unit is transferred after notice has been mailed, no separate notice to the new member is required. Attendance at any meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting. A person entitled to receive such notice may waive notice of any meeting at any time, but only by written waiver.

**3.4 Notice of Annual Meeting; Special Requirements.** Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the condominium property or association property for at least fourteen (14) continuous days preceding the annual meeting. The notice and agenda for the annual meeting shall also be sent by first class mail to each member regardless of whether the second notice of election described in Section 2.2 above is required, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may, alternatively, be delivered to each member by personal delivery if a written waiver of mailing is obtained.



3.5 Quorum. A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least one-third (1/3) of the voting interests of the entire membership.

3.6 Vote Required. The acts approved by a majority of the voting interests represented at a duly called meeting of the members at which a quorum has been attained shall be binding upon all members for all purposes, except where a greater or different number of votes is expressly required by law or by any provision of the condominium documents.

3.7 Proxy Voting. To the extent lawful, any person entitled to attend and vote at a members meeting may establish his presence and cast his vote by proxy. Proxies may not be used in electing Directors. Limited proxies shall be used for votes taken to waive or reduce reserves or waive financial statement requirements, to amend the condominium documents, and for all other substantive matters for which the Condominium Act requires or permits a vote of the members. General proxies may be used to establish a quorum, for procedural votes for which limited proxies are not required by law or the condominium documents, and for non-substantive amendments to proposals for which a limited proxy is being used. A proxy may be given by any person entitled to vote, but shall be valid only for the specific meeting for which originally given, and any lawful adjournment of that meeting, and no proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the authorized to cast the vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Association at or before the appointed time of the meeting or reconvening thereof. A proxyholder need not be a member. No proxy shall be valid if it names more than one person as the proxyholder, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

3.8 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a specified later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

3.9 Order of Business. The order of business at members' meetings shall be substantially as follows:

- (A) Counting of ballots in annual election (if necessary).
- (B) Call of the roll or determination of quorum.
- (C) Reading or disposal of minutes of last members meeting
- (D) Reports of Officers
- (E) Reports of Committees
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.10 Minutes. Minutes of all meetings of members (and those of the Board of Directors) shall be kept in a businesslike manner and available for inspection by members or their authorized representatives and Board members at all reasonable times and for a period of seven (7) years after the meeting. Minutes must be reduced to written form within thirty (30) days after the meeting at which they were taken.

3.11 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure

shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

**3.12 Action by Members Without Meeting.** Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written expressions of approval are received by the Secretary within thirty (30) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members meeting held on the date of the Board meeting. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of members' rights to call a special meeting of the membership, as provided in Section 3.2 above. If the vote is taken by the method described in this Section, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

**3.13 Voting Rights in Master Association.** In accordance with the requirements of the Master Documents, the unit owners as members of the Master Association shall cast their votes on Master Association matters through a representative of the Association. The Association shall collect, tabulate and cast such vote with the Master Association. The members' vote shall be reported to the Master Association as they are cast and not as a "block" vote.

**4. BOARD OF DIRECTORS.** The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the unit owners only when such is specifically required.

**4.1 Number and Term of Service.** The number of Directors which shall constitute the whole Board of Directors shall be not less than five(5) and not greater than seven (7) which shall be determined by the Board, in its sole discretion, by resolution from time to time. All Directors shall be elected for two (2) year staggered terms. In order to implement a proper system of staggered terms, the Board shall determine by resolution which seats shall first be elected to two (2) year terms. A Directors term will end at the annual election at which his successor is to be duly elected, unless sooner resigns or is recalled as provided in 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in case of a vacancy, as provided in 4.4 below. (Amended 1/15/2015)

**4.2 Qualifications.** Each Director must be a member or the spouse of a member.

**4.3 Annual Elections.** Unless Section 4.3.5 below applies, on the day of each annual election, the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided by law.

(A) **First Notice: Candidates.** Not less than sixty (60) days prior to the annual election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for Director may qualify as such by giving written notice to the Association not less than forty (40) days prior to the annual election. Candidates may also be nominated by any other method permitted by law.

- (B) Board Meeting. If required by law, not more than thirty-nine (39) nor less than thirty-five (35) days prior to the annual election, the Board shall hold a meeting at which additional nominations will be accepted. Notice of that Board meeting will be posted in the usual manner. Any unit owner or other eligible person may nominate himself or may nominate another unit owner or eligible person from whom he has written permission.
- (C) Second Notice; Candidate Information Sheets. If there is more than one candidate for any seat, not less than thirty (30) days before the annual election, the Association shall mail or deliver a second notice of election to all unit owners entitled to vote in said election, together with a ballot which shall list all qualified candidates. Upon timely request of a candidate, the Association shall include an information sheet (no larger than 8-1/2 inches by 11 inches, timely furnished by the candidate) with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association.
- (D) Balloting. Where balloting is required, Directors shall be elected by a plurality of the votes cast, provided that at least twenty percent (20%) of the eligible voters cast ballots. Proxies may not be used in the election. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative. Tie votes shall be broken by agreement among the candidates who are tied, or if there is no agreement, by lot, or by any other method allowed by law.
- 4.4 Vacancies on the Board. If the office of any Director becomes vacant prior to the expiration of his or her term for any reason, a successor Director to fill the remaining unexpired term or terms shall be appointed or elected as follows:
- (A) A vacancy occurring as a result of the death, disqualification, incapacity or resignation of a Director may be filled by affirmative vote of a majority of the remaining Directors, even if the remaining Directors constitute less than a quorum. Unless a different term is required by law, a successor Director shall hold office for the remaining unexpired term of his or her predecessor Director.
- (B) A vacancy occurring as a result of a recall in which less than a majority of the Directors are recalled and removed, the vacancy(ies) may be filled by the affirmative vote of a majority of the remaining Directors, even if the remaining Directors constitute less than a quorum. No recalled Director shall be appointed by the Board to fill a vacancy. Alternatively, the Board may, by affirmative vote of a majority of the remaining Directors, even if the remaining Directors constitute less than a quorum, call and conduct an election in the manner prescribed by law to fill the vacancy(ies). Vacancies occurring as a result of a recall in which a majority or more of the Directors are recalled and removed, shall be filled by an election conducted at a special members' recall meeting in the manner prescribed by law. Unit owners may vote in person or by proxy to elect successor Directors.
- 4.5 Recall and Removal of Directors. Any or all Directors may be recalled and removed from the Board by the unit owners, with or without cause, by affirmative vote of a majority of the voting interests, either at a special members' recall meeting or by written petition or agreement. If more than one Director is sought to be recalled, a separate recall vote shall be taken for each Director. A special members' recall meeting may be called by ten percent (10%) or more of the voting interests, and notice thereof shall be mailed or delivered to each unit owner and delivered to the Board at least fifteen (15) days prior to the scheduled meeting. The notice shall state that the purpose of the meeting is to recall one or more

Directors, shall contain the information required by law and shall be accompanied by a signature list of at least ten percent (10%) of the voting interests seeking the recall. The special members' recall meeting must be held not more than sixty (60) days from the date that the notice of the meeting is given and shall be conducted in the manner provided by law. If a written petition or agreement is utilized to recall one or more Directors, said petition or agreement shall be served on the Board by certified mail. Within (72) hours of receipt of the petition or agreement, the Board shall call a meeting of the Board at which it will decide whether to certify (accept) or reject the recall. The Board's course of action following its decision to certify or reject the recall shall be in accordance with governing law.

**4.6 Organizational Meeting.** The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of those Directors, at such place and time as may be fixed and announced by the Directors at the meeting in conjunction with which they were elected.

**4.7 Other Meetings.** Meetings of the Board may be held at such time and place in Collier County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or telegram at least two (2) days prior to the day named for such meeting.

**4.8 Notice to Owners.** All meetings of the Board of Directors shall be open to members. A notice and agenda for each Board meeting shall be posted conspicuously on the condominium property or association property for at least forty-eight (48) continuous hours in advance of each Board meeting, except in an emergency. Notice of any Board meeting at which a non-emergency special assessment or a rule restricting the use of units is to be considered for any reason shall be mailed to each owner at least fourteen (14) days before the meeting, and an affidavit of mailing shall be retained as proof of mailing. Notice of any Board meeting at which a budget will be adopted or amended shall be given as stated in Section 6.2 below. The right of owners to attend Board meetings includes the right to speak on designated agenda items, subject to reasonable rules of the Association governing the manner, duration and frequency of doing so.

**4.9 Waiver of Notice.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

**4.10 Quorum of Directors.** A quorum at a Board meeting shall exist when at least a majority of all Directors are present in person at a duly called meeting. Directors may participate in any meeting of the Board, by a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person at a meeting. Directors may not vote or participate by proxy or by secret ballot at Board meetings, except that officers may be elected by secret ballot.

**4.11 Vote Required.** The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes.

**4.12 Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and

date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.

**4.13 The Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of the Directors present.

**4.14 Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

**4.15 Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Condominium. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. If a committee has delegated to it the authority to bind the Association or act for and in the place of the Board, including the power to authorize the expenditure of funds, the committee shall hold its meetings and give notice of such meetings with the same formalities as required for Board meetings.

## **5. OFFICERS.**

**5.1 Officers and Elections.** The executive officers of the Association shall be a President, and at least one (1) Vice-President, who must be Directors, a Treasurer and a Secretary, all of whom shall be elected annually by a majority of the Board of Directors. Any officer may be removed with or without cause by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

**5.2 President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.

**5.3 Vice-Presidents.** The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall assign.

**5.4 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the members and shall cause all votes and the minutes of all proceedings to be recorded in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the condominium documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

**5.5 Treasurer.** The Treasurer shall be responsible for Association funds and securities, the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association, and the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall oversee the disbursement of the funds of the Association, keeping proper vouchers for such disbursements, and shall render to the President and Directors, at the meetings of the Board, or whenever they may require it, an accounting of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

**6. FISCAL MATTERS.** The provisions for fiscal management of the Association set forth in the Declaration of Condominium shall be supplemented by the following provisions:

**6.1 Depository.** The Association shall maintain its funds in federally insured accounts in such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board.

**6.2 Budget.** The Board of Directors shall adopt a budget of common expenses for each fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be adopted shall be mailed to or served on the owner of each unit not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and shall show the amounts budgeted by income and expense classifications and shall contain all items required by law.

**6.3 Statutory Reserves for Capital Expenditures and Deferred Maintenance.** In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. These reserves shall be funded unless the members subsequently determine by majority vote of those present in person or by proxy at a duly called meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in 6.2 above. Reserves funded under this paragraph, and all interest earned on such reserves, shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority of the voting interests present and voting at a members' meeting called for the purpose.

**6.4 Other Reserves.** In addition to the statutory reserves provided in Section 6.3 above, or in place of them if the members so vote, the Board may establish one or more additional reserve accounts for contingencies, operating expenses, repairs, minor improvements or deferred maintenance. The purpose of these reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget each year. These funds may be spent for any purpose approved by the Board.

**6.5 Assessments.** Regular annual assessments based on the adopted budget shall be paid in quarterly installments, in advance, due on the first day of January, April, July and October of each year. Written notice of each quarterly installment shall be sent to the members at least fifteen (15) days prior to the due date. Failure to send or receive such notice shall not excuse the obligation to pay. If an annual budget has not been adopted at the time the first quarterly installment for a fiscal year is due, it shall be presumed that the amount of such installment is the same as the last quarterly payment, and shall be continued at such rate until a budget is adopted and pro rata assessments are calculated, at which time

any overage or shortage calculated shall be added or subtracted from each unit's next due quarterly installment.

**6.6 Special Assessments.** Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The total of all special assessments coming due in any fiscal year shall not exceed fifteen percent (15%) of the total annual budget for that year, including reserves, unless a majority of the voting interests first consent. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

**6.7 Fidelity Bonds.** The President, Secretary and Treasurer, and all persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or otherwise determined by the Board of Directors. The premiums on such bonds shall be a common expense.

**6.8 Financial Statements.** Not later than ninety (90) days after the close of each fiscal year, the Board shall prepare, and shall distribute to the owners of each unit, financial statements meeting the minimum standards of Section 718.111(13) or Section 718.111(14), of the Condominium Act (whichever is applicable), showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, detailed by accounts. The requirements of Section 718.111(14), if applicable, may be waived for a fiscal year by a vote of the members taken during that fiscal year.

**6.9 Audits.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all members.

**6.10 Fiscal Year.** The fiscal year for the Association shall begin on the first day of January of each calendar year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States of America.

**7. RULES AND REGULATIONS.** The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management and control of the common elements and the operation of the Association. Copies of such rules and regulations shall be furnished to each unit owner. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners and uniformly applied and enforced.

**8. COMPLIANCE AND DEFAULT REMEDIES.** In addition to the remedies provided in Section 19 of the Declaration of Condominium, the following provisions shall apply:

**8.1 Fines.** The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the condominium documents or the rules and regulations, or condone such violations by their family members, guests or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law. The procedure for imposing fines shall be as follows:

- (A) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:
- (1) A statement of the date, time and place of the hearing;
  - (2) A specific designation of the provisions of the Declaration, Bylaws or rules which are alleged to have been violated; and,
  - (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
  - (4) The amount of any proposed fine.
- (B) At the hearing the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the committee, by majority vote, does not agree with the fine, it may not be levied.

**8.2 Mandatory Non-Binding Arbitration.** In the event of any "dispute" as defined in Section 718.1255(1) of the Condominium Act, between a unit owner and the Association arising from the operation of the Condominium, the parties must submit the dispute to mandatory non-binding arbitration under the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes prior to filing any lawsuit over the disputed matters. Nothing herein shall be construed to require arbitration of disputes related to the levy or collection of fees or assessments.

**8.3 Availability of Remedies.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the majority's right to enjoy the condominium property free from unreasonable restraint and annoyance.

**9. AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:

**9.1 Proposal.** Amendments to these Bylaws may be proposed by a majority of the Board or upon written petition signed by at least one-fourth (1/4th) of the voting interests.

**9.2 Procedure.** Upon any amendment or amendments to these Bylaws being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can still be given.

**9.3 Vote Required.** Except as otherwise provided by law, or by specific provision of the condominium documents, a proposed amendment to these Bylaws shall be adopted if it is approved at least two-thirds (2/3rds) of the voting interests present in person or by proxy at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law.



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9.4 **Recording; Effective Date.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida. The certificate must identify the book and page of the Public Records where the Declaration of Condominium was originally recorded.

**10. MISCELLANEOUS.**

10.1 **Gender.** Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

10.2 **Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

10.3 **Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Condominium or Articles of Incorporation, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.

BYLAWS

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Exhibit "D"

HOLLY A. HARMON, P.A., Attorney at Law III 1100 Fifth Avenue South, Suite 201, Naples, FL 33940

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1ST AMEMDED NEWCASTLE ARTICLES OF INCORPORATION FOR CONDOMINIUM

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**AMENDED AND RESTATED ARTICLES OF INCORPORATION**  
**OF**  
**NEWCASTLE CONDOMINIUM ASSOCIATION, INC.**

Pursuant to Section 617.0201(4), Florida Statutes, the Articles of Incorporation of Newcastle Condominium Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on February 26, 1990, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.0201(4), Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.0201(4) and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Newcastle Condominium Association, Inc., shall henceforth be as follows:

**ARTICLE I**

**NAME:** The name of the corporation, herein called the "Association", is Newcastle Condominium Association, Inc., and its address is Squire Circle and Landover Circle, Naples, FL 33942.

**ARTICLE II**

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

The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit under the laws of the State of Florida, except as limited or modified by these Articles, the Declaration of Condominium, the Bylaws or the Florida Condominium Act; and it shall have all of the powers and duties reasonably necessary to operate the Condominium pursuant to said Declaration as it may hereafter be amended, including but not limited to the following:

- (A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property.
- (C) To purchase insurance upon the condominium property and Association property for the protection of the Association and its members.
- (D) To reconstruct improvements after casualty and to make further improvements of the condominium property.

Articles of Incorporation

Exhibit "C"

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HOLLY A. HARMON, P.A. ■ Attorney at Law ■ 1100 Fifth Avenue South, Suite 201, Naples, FL 33940

- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.
- (F) To approve or disapprove the transfer, leasing and occupancy of units, as provided in the Declaration of Condominium.
- (G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (H) To contract for the management and maintenance of the condominium and the condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.
- (K) To borrow money without limit as to amount if necessary to perform its other functions hereunder.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

The Association shall have no power to purchase an apartment of the Condominium except at sales in foreclosure of liens for assessments for common expenses, at which sales the Association shall bid no more than the amount secured by its liens. This provision shall not be changed without unanimous approval of the members and the joinder of all record owners of mortgages upon the Condominium.

### ARTICLE III

#### MEMBERSHIP:

- (A) The members of the Association shall be the record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE IV

TERM: The term of the Association shall be perpetual.

ARTICLE V

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VI

DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by written petition, signed by at least one-fourth (1/4) of the voting interests.
- (B) Procedure. Upon any amendment to these Articles being proposed by said Board or unit owners, such proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.
- (C) Vote Required. Except as otherwise provided for by Florida law, these Articles of Incorporation may be amended by vote of a majority of the voting interests at any annual or special meeting, or by approval in writing of a majority of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a copy of the proposed amendment.
- (D) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

ARTICLE VII

**INDEMNIFICATION:** To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgement or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgement in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

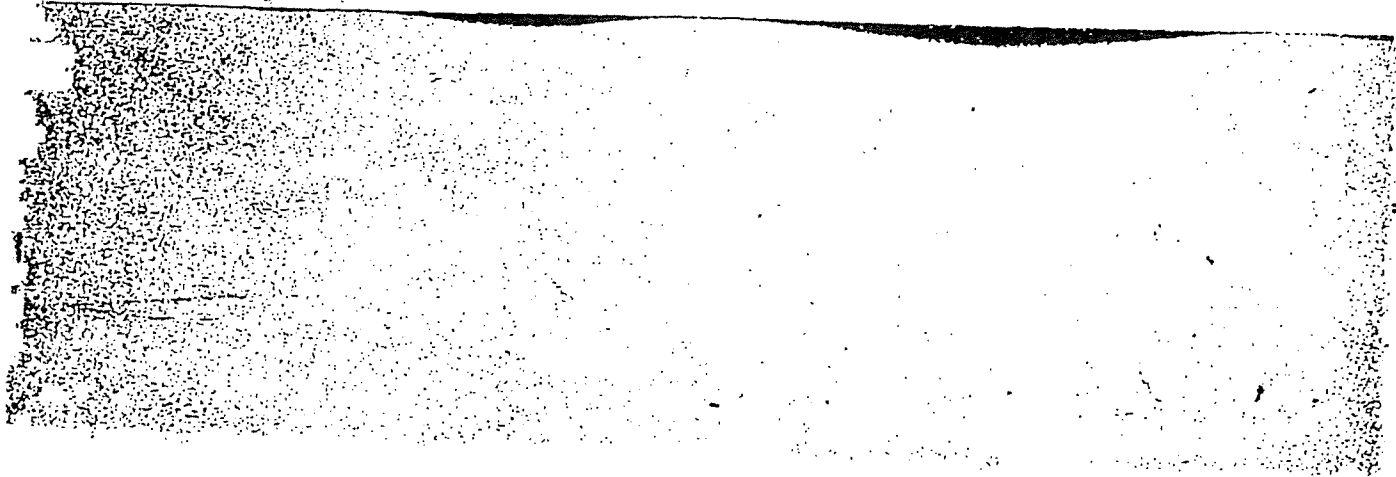
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Articles of Incorporation

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Exhibit "C"

HOLLY A. HARMON, P.A. ■ Attorney at Law ■ 1100 Fifth Avenue South, Suite 201, Naples, FL 33960  
Official Records of  
SUNSHINE COUNTY, FLORIDA  
COMMERCIAL RECORDS CLERK





RULES AND REGULATIONS OF CONDOMINIUM  
( WITH CHANGES THRU 2016)

April 2015 and updates 2016

**NEWCASTLE CONDOMINIUM ASSOCIATION, INC.  
AMENDED RULES AND REGULATIONS**

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### **SECTION 1. DEFINITIONS**

1.1 All terms and definitions used in these Rules and Regulations shall have the same meaning as set forth in section 4 of the Declaration of Condominium for Newcastle.

### **SECTION 2. USE AND OCCUPANCY BY FAMILY AND GUESTS**

2.1 Residential Use only. Each unit shall be occupied only by one family at a time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any unit. This rule shall not prohibit personal libraries or home offices, but any home offices shall be limited to strictly to calls or written correspondence and shall not be used in such a manner that customers or employees are coming and going from the unit.

2.2 Occupancy.

A. Each unit shall be occupied by a single family and is limited to not more than two unrelated persons.

B. Owner in residence. There is no restriction on the number of guests, whether related or unrelated to the owner, who may occupy the unit together with the owner, except that no more than eight (8) can occupy a three (3) bedroom condo unit and no more than six (6) can occupy a 2-bedroom unit at any time.

C. Owner not in residence – related guests. If the owner and his family are absent, and the unit has not been leased, the owner may permit the parent or child (including their spouse and children, if any) of the owner or owner's spouse to occupy the unit for a period not to exceed 15 days. The total number of occasions for occupancy of this type is limited to 4 times in any 12 month period, with a maximum aggregate total of 60 days.

D. Owner not in residence – unrelated guests. Guests not included within subparagraph (C) above are permitted one (1) family occupancy in the owner's absence, however the number of family members cannot exceed 4 and they may stay no longer than 14 consecutive days and the total number of occasions for this type of occupancy shall be limited to 3 in any 12 month period.

E. Leased units - Lessee in residence. No one but the approved lessee and his family members within the first degree of relationship and their spouses and guests may occupy the unit. Overnight occupants are limited to 2 persons per bedroom in leased units.

F. Leased units – Lessee not in residence. In the absence of a lessee, the lessee's family within the first degree of relationship already in residence may continue to occupy the unit and may have house guests in accordance with these Rules. No more than two (2) guests are permitted and each must be at least eighteen (18) years of age. If the lessee and all other family within the first degree of relationship are absent, no other person may occupy the unit.

### **SECTION 3. LEASE OF UNITS**

3.1 General Provisions. See Section 13 of Declaration of Condominium.

3.2 Only the entire unit may be rented and occupancy is limited to only one lessee and members of lessee's immediate family and guests. Occupancy is not to exceed six (6) for a three bedroom or four (4) for a two bedroom.

3.3 No unit may be rented more than four (4) times in a calendar year. No lease term shall be for less than thirty (30) consecutive days or greater than one (1) year. The Board in its discretion shall have the right to approve the same lease year-to-year. No subleasing or assignments are allowed.

3.4 No pets are permitted in leased units.

3.5 While a unit is under lease, the owner is prohibited from the use of the assigned parking space and all common area usage.

3.6 No lease can release or discharge the owner from any of his obligations and duties under the condominium documents as a member of the association. Owners are responsible for any damage caused by or expenses incurred by lessees, their family and guests.

3.7 When an owner intends to lease a unit, the following must be provided to the Board at least twenty (20) days before the commencement of the proposed lease:

- A. An executed copy of the proposed lease
- B. The association's lease application form and all required fees
- C. Any such information or background checks or credit checks that the Board may require

3.8 After receiving a complete lease application pursuant to rule 3.7 above, the Board will provide written approval or disapproval within 20 days of receipt of all required information. The Board shall require an in-person interview with any applicants who have not previously resided in Newcastle and who desire to lease for more than six (6) months in any calendar year, and failure to attend an interview with the Board or the Board's designated representative may be grounds for disapproval of the lease. If an interview is not conducted within the 20-day lease review period due to non-action by the Board, then the Board cannot deny the lease solely based on the applicant's failure to attend an interview. Any lease entered into without approval by the Board as provided in the Declaration and in these Rules shall be null and void, and the Board shall have the right to evict the unapproved lessee on behalf of the owner.

3.9 The Board has the right to appoint an "ad hoc" Lease/Rental Committee to administer the Board's duties with respect to lease applications.

#### **SECTION 4. SALES AND OTHER TRANSFERS OF UNITS**

4.1 Transfer of Ownership of Units. Procedures and rules relating to the sale or other conveyance of units are set forth in Section 14 of the Declaration of Condominium.

4.2 Open Houses and Unit Showings. Open houses may be held from 12:00pm to 5:00pm on Saturdays and Sundays. An Open House sign may be displayed on the common areas contemporaneous with the open house but not in any windows in the Unit to be sold.

#### **SECTION 5. LANAIS, BALCONIES, TERRACES.**

5.1 Furniture. From May 1 through October 31, no furniture may be left unsecured on a balcony or lanai when the owner or lessee is absent for more than ten (10) days. If an approved storm shutter is in place on the lanai, the furniture will be considered secured. If the Property

Manager needs to remove or secure furniture during this period, the owner will be responsible for costs incurred which shall be an assessment against the unit.

5.2 Barbecuing. No hibachi, any kind of grill *including electrical*, or other similar devices used for cooking, heating, or any other purpose shall be used, stored or kindled on any lanai or balcony.

5.3 Potential Damage to Lower Balconies. No solid or liquid substances should be dropped from the balcony. Ash or butts from cigars or cigarettes must not be thrown over the balcony railings.

5.4 Floor Covering. No carpeting or other porous materials of any kind may be installed over balcony concrete floors exposed to the elements.

## **SECTION 6. SWIMMING POOL.**

General Rules.

- A. The swimming pool may be used from sunrise to sunset.
- B. Children under 13 years of age using the swimming pool or pool area must be accompanied by an adult. The adult is responsible for insuring that the children do not disturb others.
- C. Swim diapers are required for use by children who are not toilet trained.
- D. A shower is required before entering the pool.
- E. Floats, rafts, beach balls and similar objects are not permitted in the pool.
- F. Running, horseplay and other potentially injurious conduct are prohibited in the swimming pool areas.
- G. An underlying towel must be put on pool side furniture during use to protect it from oils, lotions and perspiration.
- H. Pool furniture should not be reserved by placing towels or other personal items on chairs and lounges.
- I. All persons must be properly attired in a cover up and foot covering going to and from the condo buildings to the pool areas. A cover up and foot covering is mandatory for all persons in any common area other than the pool.
- J. Earphones or ear buds are to be used for all radios and other electronic music devices. Leave the seating areas at the pool deck when talking on a cell phone.
- K. No food or glassware is allowed in the pool or on the pool deck. Food and drink are only permitted in the pavilion area.
- L. No one with open wounds or communicable disease is allowed in the pool.
- M. There is no lifeguard on duty. Swim at your own risk. For emergencies, call 911.

## **SECTION 7. PARKING AND VEHICLES.**

A. One (1) parking space has been assigned for the exclusive use of each unit and is indivisible from that unit. They cannot be leased and may be "sold" only as an indivisible part of the sale of the unit. Further, the approved Unit owner or lessee occupying a Unit may park one (1) additional permanent vehicle in unassigned spaces on a first-come first-served basis. This Rule does not limit guests from parking temporarily in unassigned spaces on a first-come first-served basis, **but in any event not more than Ninety (90) days in any calendar year.**

B. Residents and guests shall refrain from parking in spaces designated and assigned to other units unless the owner of the vehicle has written permission from the owner of the assigned space and the Property Manager.

C. No commercial vehicle, vessels, trailers, motorcycles or recreational vehicles may be parked on the condominium property, except on a temporary basis for business purposes. No repairs or modifications of vehicles are permitted on condominium property.

E. Owners who lease units must make their assigned parking space available for the lessees' use and are not allowed to park on the condominium property during the duration of the lease.

F. Assigned parking spaces may be used to park only passenger cars and standard sized SUVs. Pickup trucks shall not be parked overnight on the condominium property.

G. The speed limit in the condominium property for all vehicles is ten (10) mph.

H. All vehicles parked on the condominium property must be well-maintained and may not be unsightly, inoperable, unlicensed or unreasonably noisy.

I. Go-carts and motorized scooters shall not be operated on the condominium property.

## **SECTION 8. PETS.**

### **8.1 General Rights and Restrictions.**

A. Owners may have one (1) small-breed domesticated household-type pet (e.g. a cat or dog) which shall not exceed forty (40) pounds in weight. The ability to keep a pet is a privilege, not a right, and can be revoked by the Board of Directors. Lessees are not allowed to keep any pets.

B. No visiting pets are allowed in any unit.

C. Before bringing a pet into the condominium property, pet owners shall register the pet with the Property Manager and sign a statement that they have received the rules and will obey them. Failure to register a pet may result in loss of the privilege to keep a pet.

D. Pets must be leashed and under control of their owners at all times when outside units. No outdoor cats are allowed. "Control" means pets are expected to exhibit good behavior, i.e. no growling,

E. The association has adopted specifications and standards for hurricane shutters which are incorporated into these Rules by reference, and which are available from the Property Manager.

F. Unless there is an insurable event covered by the Association's insurance policy(s), all owners shall take whatever steps are necessary to repair water damage and to prevent the spread of mold to other units and common areas, including without limitation damage to drywall.

**SECTION 11. SMOKING REGULATIONS**

11.1 Prohibition. Smoking is prohibited in all common indoor areas consistent with the Florida Clean Indoor Air Act. Smoking is also prohibited on the lanais, in the pool area and in any other outdoor common areas where residents typically gather.

11.2 Reservation of Right. The Board reserves the right to prohibit smoking in other areas on the condominium property as the Board deems necessary to abate any nuisance or safety issues.

**Section 12. NUISANCES AND LAWFUL USE.**

12.1 No nuisance shall be permitted on the condominium property, nor any use or practice which is a source of constant annoyance to owners, residents or tenants, or which interferes with the peaceful, enjoyment and proper use of the condominium property by the owners, residents and tenants.

12.2 Radios, television, stereos and musical instruments must be kept at reasonable volumes and not be played or used between the hours of 11:00 pm and 6:00 am except in such a manner that they are not audible at all to other residents.

12.3 No resident shall permit work to be done in a unit between the hours of 11:00 pm and 6:00 am.

12.4 No resident shall entertain outside their unit past 11:00 pm, and any noise shall be kept to a minimum volume between the hours of 11:00 pm and 6:00 am.

12.5 There shall be no conduct or use of the condominium property that increases the association's insurance costs, including without limitation cooking on gas or charcoal grills near the buildings, in the units or on the lanais. There shall be no outdoor cooking or grills placed within 10 feet of the buildings.

12.6 No unlawful, immoral or offensive use shall be made of the condominium property.

**SECTION 13. MISCELLANEOUS.**

13.1 No firearms shall be permitted to be discharged any place upon the condominium property. "Firearms" includes rifles, shotguns, pistols, air rifles, BB guns and sling shots.

13.2 Porches, walkways, stairways or railings shall be used only for intended purposes and shall not be used for hanging garments, rugs or other objects, cleaning, or outdoor cooking.



13.3 No signs other than association meeting announcements shall be posted on buildings or common areas unless approved in advance by the Board.

13.4 Residents shall not store or keep their personal property on the common areas.

13.5 No plantings shall be done in the common areas without written approval from the Board. Any unauthorized plantings will be removed by the Association, and the costs incurred shall be assessed to the responsible owner and/or tenant.

13.6 No soliciting is allowed. Any unusual or suspicious activity should be reported to the Collier County Sheriff's Office.

13.7 All trash must be placed in a plastic bag securely tied and placed inside the dumpster. All boxes must be broken down and placed inside the dumpster. Any recyclable material must be placed inside the appropriate recycle bin. At no time may any trash or other items be placed outside the rubbish dumpster.

#### **SECTION 14. TEMPORARY STORAGE OF BICYCLES AND/ OR BABY CARRIAGES**

The Board of Directors of the Newcastle Condominium Association in accordance with Article 12.10 Use of Common Elements (revised on January 21, 2016) adopts the following guidelines for temporary storing of bicycles and/or baby carriages on the common elements of the Association:

1. Bicycles and/or baby carriages may only be temporarily stored while in use under the stairwells of buildings no other common element location on a first come first serve basis. No permanent storage is allowed and such items which are left over long periods of time must be removed or the Association at its sole discretion may discard them as abandoned.
2. Owners of such bicycles and/or baby carriages must take full responsibility for the security of such items. The Association will bear no responsibility if any of these items are stolen or damaged while being stored temporarily under the stairwells. No monetary reimbursements will be given to owners who have such items stolen or damaged.
3. Owners may not attach security devices, hangers or any other device to the common elements while temporarily storing bicycles and/or baby carriages. (Ex. No attachments to walls, floors, railings, ceilings or any other common element) Owners are permitted to attach security devices directly to bicycles and/or baby carriages provided they do not attach directly to any common element.
4. Temporary storage of bicycles and/or baby carriages is a privilege not a right and as such the Board of Directors may revoke permission at its sole discretion if the owners of such items do not follow the guidelines.
5. Any and all bicycle and/or baby carriage storage must follow the rules of the Florida Fire Code as administered by the agencies of the Collier County.  
(Added to Rules 2016)

**SECTION 15. ENFORCEMENT OF RULES.**

15.1 Each new resident who is approved for occupancy in Newcastle shall sign a compliance agreement as a condition of approval, which shall provide that the resident has received a copy of these Rules and agrees to abide by them.

15.2 Enforcement of Rules. The Board shall decide in its sole discretion when enforcement of these Rules is necessary, and such discretion may be delegated in whole or in part to the Property Manager. The Board will proceed in accordance with Section 19 of the Declaration of Condominium and section 718.303 the Florida Condominium Act in satisfying its obligation to enforce the Rules. The Board shall have the right, without limitation, to impose fines and suspensions as authorized by law and to engage legal counsel to seek relief from an arbitrator or court.