

exhibits and the Condominium Act.

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

6.2 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 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, and no fractional portion may be sold, leased or otherwise transferred. The use, occupancy, structural alteration, transfer, exterior appearance of the Units, and the appearance of the Common Elements and Limited Common Elements, shall be governed by the Condominium Documents.

7. COMMON ELEMENTS: EASEMENTS:

7.1 Definition. The term "Common Elements" means all portions of the Condominium Property not included within the Units, and includes without limitation the following:

- (A) Land. The land upon which the improvements are located is a Common Element.
- (B) Building. All portions of the building and other improvements not included within the Units are Common Elements, except for certain portions of the Common Elements which are designated as Limited Common Elements.
- (C) Easements. Easements through Units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other Units and the Common Elements, and an easement of support in every portion of a Unit which contributes to the support of a building are Common Elements.
- (D) Supply of Services. The property and installments required for furnishing utilities and other services to more than one Unit or to the Common Elements are Common Elements.
- (E) Other Common Elements. Any other parts of the Condominium Property designated as Common Elements in this Declaration, the original Declaration of Condominium or any recorded exhibit thereto or under the Condominium Act also constitute Common Elements.

The Units, Common Elements and Limited Common Elements are designated in Exhibit "1" (Certificate of Surveyor, Legal Description, Survey/Plot Plan and Floor Plans) attached hereto.

7.2 Easements. Each of the following easements and easement rights are reserved through the Condominium Property and are covenants 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.

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(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, telephone, water, sewer, electronic security or other utility or service easements, or relocate any existing easements, in any portion of the Common Elements or Association Property, and to grant easements or relocate any existing easements in any portion of the Common Elements or Association Property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium, or for the general health or welfare of the Unit Owners. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the Units. The Association may also transfer title to utility-related equipment, 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. In connection with the foregoing, bills of sale may be granted for items of personal property owned or governed by the Association. The Association also has the authority to take any other action, on behalf of itself and all Unit Owners, to satisfy the requirements of any public 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. None of the easements specified in this paragraph shall be encumbered by any leasehold or lien other than those on the condominium parcels. Any such lien encumbering such easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

(D) Easements Created and Reserved in Original Declaration. The Condominium is also subject to such other easements created and reserved in the original Declaration in addition to those easements previously recorded in the Public Records of Lee County, Florida or easements created under the Condominium Act.

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 separately described. As long as the Condominium exists, the Common Elements cannot be partitioned. No Unit Owner may assign, pledge or transfer his share in the funds and assets of the Association except as an appurtenance to his Unit. However, the foregoing shall not prevent the Association from pledging,

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assigning or otherwise encumbering Assessments and real and personal property owned by the Association as collateral for a loan.

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) any area(s) labeled as a Limited Common Element on the Condominium Plat and contiguous to a Unit or identified as being appurtenant to a Unit, including, without limitation, unscreened balconies/terraces and screened terraces.

(B) two (2) parking spaces as contained in the garage area(s) as originally assigned to each Unit by the developer of the Condominium; provided however each penthouse Unit (designated as Units PH-1901, PH-1903, PH-1904 and PH-2003) has one enclosed two (2)-car garage. If desired by a Unit Owner, the Limited Common Element parking spaces appurtenant to such Owner's Unit may be used for the parking of golf carts.

(C) the structure(s) located on a portion of the building on which is located any air-conditioning equipment which serves the Unit.

(D) for each Unit, one air-conditioned storage locker contained within the building, as originally assigned by the developer of the Condominium.

(E) the mailbox which exclusively serves a Unit.

(F) windows, doors, sliding glass doors and screens, including all framings, casings and hardware.

8.2 Maintenance of Limited Common Elements. The Limited Common Elements shall be maintained, repaired or replaced by the Association as part of the common expenses; provided, however, that:

(A) each respective Unit Owner may utilize the portions of the unscreened balconies/terraces and screened terraces which are constructed adjacent to and connected with a Unit for the exclusive use of such Unit Owner, and such Unit Owners shall be responsible for (1) all structures pertaining thereto; (2) the maintenance of all items placed within such unscreened balconies/terraces and screened terraces by such Unit Owner as well as the day-to-day cleaning of the unscreened balcony's or balconies' surface; and (3) all wiring, electrical circuits and light bulbs. The maintenance of railings on unscreened balconies/terraces and screened terraces shall be the responsibility of the Association and shall be a

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