

AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF

SANIBEL MOORINGS CONDOMINIUM

**SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM-
SEE CURRENT DECLARATION OF CONDOMINIUM FOR CURRENT TEXT**

RECITALS:

In a Declaration of Condominium recorded at O.R. Book 772, Pages 452 et seq. of the Lee County Public Records on January 21, 1972, the Condominium Developer did submit to condominium ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Lee County, Florida, more particularly described as follows:

PARCEL NO. 1

A TRACT OR PARCEL OF LAND LYING IN LOTS 112 THROUGH 116, INCLUSIVE, BLOCK 3, FIRST ADDITION TO SHELL HARBOR, SECTIONS 20 AND 29, TOWNSHIP 46 SOUTH, RANGE 23 EAST, SANIBEL ISLAND, ACCORDING TO PLAT RECORDED IN PLAT BOOK 25 AT PAGE 66 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA WHICH TRACT OR PARCEL IS DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHERLY MOST CORNER OF SAID LOT 112 RUN N 58°46'09"E ALONG THE NORTHERLY LINE OF GULF DRIVE 227.5 FEET, THENCE RUN N 31°13'51"W FOR 30 FEET; S 58°46'09"W FOR 20 FEET; S 31°13'51" E FOR 20 FEET; S 58°46'09" W FOR 150 FEET; N 31°13'51" W FOR 20 FEET; S 58°46'09"W FOR 35 FEET; N 31°13'51"W FOR 55 FEET; N 58°46'09"E FOR 25 FEET; S 31°13'51"E FOR 35 FEET; N 58°46'09"E FOR 10 FEET; N 31°13'51"W FOR 20 FEET; N 58°46'09"E FOR 110 FEET; S 31°13'51"E FOR 20 FEET; N 58°46'09"E FOR 195 FEET; N 31°13'51"W FOR 20 FEET; N 58°46'09"E FOR 120 FEET; S 31°13'51"E FOR 20 FEET; N 58°46'09"E FOR 11.5 FEET; S 31°13'51" E FOR 20 FEET; S 58°46'09"W FOR 11.5 FEET; S 31°13'51"E FOR 20 FEET; S 58°46'09"W FOR 140 FEET; N 31°13'51"W FOR 20 FEET; S 58°46'09"W FOR 15 FEET; S 31°13'51"E FOR 30 FEET TO AN INTERSECTION WITH SAID NORTHERLY LINE OF GULF DRIVE; THENCE N 58°46'09"E ALONG SAID NORTHERLY LINE FOR 172.5 FEET TO THE EASTERLY MOST CORNER OF SAID LOT 116; THENCE N 31°13'51"W ALONG THE EAST LINE OF SAID LOT AND THE EAST LINE OF A UTILITY EASEMENT 6 FEET WIDE FOR 179.76 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE TO THE LEFT OF RADIUS 1195.59 FEET FOR 156.63 FEET TO A POINT OF TANGENCY; THENCE S 58°46'09"W FOR 53.82 FEET; S 31°13'51" E FOR 40 FEET; S 58°46'09"W FOR 80 FEET; N 31°13'51 W FOR 40 FEET; S 58°46'09"W FOR 210 FEET TO AN INTERSECTION WITH THE WEST LINE OF SAID LOT 112; THENCE S 31°13'51" E ALONG SAID WEST LINE AND THE CENTERLINE OF A DRAINAGE EASEMENT 12 FEET WIDE FOR 190 FEET TO THE POINT OF BEGINNING.

SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS 10 FEET WIDE, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS: FROM THE ABOVE MENTIONED POINT OF BEGINNING RUN N 58°46'09"E ALONG SAID NORTHERLY LINE OF GULF DRIVE FOR 275 FEET; THENCE RUN N 31°13'51"W FOR 50 FEET TO THE POINT OF BEGINNING. FROM SAID POINT OF BEGINNING CONTINUE N 31°13'51" W FOR 100 FEET TO THE END OF THE HEREIN DESCRIBED CENTERLINE. SUBJECT TO THE HEREINABOVE DESCRIBED UTILITY EASEMENT AND A UTILITY EASEMENT 6

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FEET WIDE ALONG SAID NORTHERLY LINE OF GULF DRIVE. SUBJECT TO AND TOGETHER WITH THE HEREINABOVE DESCRIBED DRAINAGE EASEMENT.

PARCEL NO. 2

A TRACT OR PARCEL OF LAND LYING IN SECTION 29, TOWNSHIP 46 SOUTH, RANGE 23 EAST, SANIBEL ISLAND, LEE COUNTY, FLORIDA WHICH TRACT OR PARCEL IS DESCRIBED AS FOLLOWS: FROM THE ABOVE MENTIONED SOUTHERLY MOST CORNER OF SAID LOT 112 RUN S 31°13'51"E FOR 60 FEET TO THE SOUTH LINE OF GULF DRIVE AND THE WESTERLY MOST CORNER OF LANDS CONVEYED BY DEED RECORDED IN O.R. BOOK 663, AT PAGE 104 OF SAID PUBLIC RECORDS AND THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING RUN N 58°46'09"E ALONG SAID SOUTHERLY LINE OF GULF DRIVE FOR 30 FEET; THENCE S 31°13'51"E FOR 25 FEET; S 58°46'09"W FOR 20 FEET; S 31°13'51" E FOR 270 FEET; N 58°46'09"E FOR 20 FEET; S 31°13'51"E FOR 10 FEET; N 58°46'09"E FOR 20 FEET; N 31°13'51"W FOR 10 FEET; N 58°46'09" E FOR 20 FEET; N 31°13'51"W FOR 190 FEET; S 58°46'09"W FOR 20 FEET; N 31°13'51"W FOR 105 FEET TO AN INTERSECTION WITH SAID SOUTHERLY LINE OF GULF DRIVE; THENCE N 58°46'09"E ALONG SAID SOUTHERLY LINE FOR 145 FEET; THENCE S 31°13'51"E FOR 6 FEET; S 58°46'09"W FOR 20 FEET; S 31°13'51"W FOR 210 FEET; N 58°46'09"E FOR 20 FEET; S 31°13'51"E FOR 10 FEET; N 58°46'09"E FOR 20 FEET; N 31°13'51"W FOR 10 FEET; N 58°46'09"E FOR 20 FEET; S 31°13'51"E FOR 15 FEET; S 58°46'09"W FOR 15 FEET; S 31°13'51"E FOR 85 FEET; N 58°46'09"E FOR 95 FEET; N 31°13'51"W FOR 135 FEET; S 58°46'09"W FOR 80 FEET; N 31°13'51"W FOR 65 FEET; S 58°46'09" W FOR 20 FEET; N 31°13'51"W FOR 116 FEET TO AN INTERSECTION WITH SAID SOUTHERLY LINE OF GULF DRIVE; THENCE ALONG SAID SOUTHERLY LINE N 58°46'09"E FOR 235 FEET; THENCE S 31°13'51" E FOR 15 FEET; THENCE S 58°46'09"W FOR 20 FEET; S 31°13'51"E FOR 220 FEET; N 58°46'09"E FOR 20 FEET; S 31°13'51"E FOR 120 FEET; N 58°46'09" E FOR 20 FEET; N 31°13'51"W FOR 10 FEET; N 58°46'09"E FOR 20 FEET; N 31°13'51" W FOR 330 FEET; S 58°46'09" W FOR 20 FEET; N 31°13'51" W FOR 15 FEET; TO AN INTERSECTION WITH SAID SOUTHERLY LINE OF GULF DRIVE; THENCE ALONG SAID SOUTHERLY LINE N 58°46'09"E FOR 30 FEET; THENCE S 31°13'51" E ALONG THE NORTHEASTERLY LINE OF A UTILITY EASEMENT 6 FEET WIDE FOR 543 FEET MORE OR LESS TO THE WATERS OF THE GULF OF MEXICO; THENCE SOUTHWESTERLY ALONG SAID WATERS TO AN INTERSECTION WITH A LINE BEARING S 31°13'51" E AND PASSING THROUGH THE POINT OF BEGINNING; THENCE RUNNING N 31°13'51"W ALONG SAID LINE AND THE SOUTHWESTERLY LINE OF A UTILITY EASEMENT 6 FEET WIDE FOR 563 FEET MORE OR LESS TO THE POINT OF BEGINNING.

SUBJECT TO THE HEREINABOVE DESCRIBED UTILITY EASEMENT AND UTILITY EASEMENT 6 FEET WIDE ALONG SAID SOUTHERLY LINE OF GULF DRIVE.

BEARINGS HEREINABOVE MENTIONED ARE FROM SAID RECORD PLAT.

The Condominium Property is further described at Condominium Plat Book 2, Pages 175 et seq., and at Condominium Plat Book 2, Pages 129 et seq., Lee County Public Records.

Said Declaration was subsequently amended as follows:

Amendment recorded at O.R. Book 826, Pages 830, Lee County Public Records.

Amendment recorded at O.R. Book 842, Pages 409, Lee County Public Records.

Amendment recorded at O.R. Book 1346, Pages 1287, Lee County Public Records.

Amendment recorded at O.R. Book 1544, Pages 1683, Lee County Public Records.

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Amendment recorded at O.R. Book 2191, Pages 0736, Lee County Public Records.
Amendment recorded at O.R. Book 2231, Pages 4228, Lee County Public Records.
Amendment recorded at O.R. Book 2763, Pages 3513, Lee County Public Records.
Amendment recorded at O.R. Book 2763, Pages 3494, Lee County Public Records.
Amendment recorded at O.R. Book 3089, Pages 1389, Lee County Public Records.

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

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

1.1 "Act" or "Condominium Act" means the Condominium Act (Chapter 718, Florida Statutes 2003), as it now exists including the definitions therein contained.

1.2 "Articles" means Articles of Incorporation as attached hereto as Exhibit "B."

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

1.4 "Association" means SANIBEL MOORINGS CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

1.5 "Association Property" means all real or personal property, owned or leased by the Association for the use and benefit of the Unit Owners.

1.6 "Balcony" is an attachment(s) to more than one unit that provides an entrance for second floor units.

1.7 "Board of Directors" or "Board" or "Directors" means the representative body which is responsible for the administration of the Association's affairs, and which is the same body that is sometimes referred to in the Condominium Act as the "Board of Administration." Each Director must be a Unit Owner, or Primary Occupant (in case of Units that designate a Primary Occupant), the spouse of a Unit Owner or Primary Occupant, the settler, grantor, or beneficiary of a trust described in Section 733.707, Florida Statutes (2003), which owns a Unit, or the spouse of such party.

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1.8 “**Building**” means a “building” as defined in Section 718.111(11)(b) of the Act.

1.9 “**Bylaws**” mean the Bylaws of the Association as attached hereto as Exhibit “C.”

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

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

1.11.1 The portions of the Condominium Property not included within the Units.

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

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

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

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

1.12 “**Common Expenses**” means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Common Expenses include, but are not limited to, such items as cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of upkeep, lawn and landscape services, utility bills, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of bulk cable or master antenna television, and bulk interior pest control, are specifically considered a common expense, if so designated by the Board. Common Expenses also include reasonable insurance for Directors and officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or property of the condominium.

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1.13 “Common Surplus” means the excess of all receipts of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, above the amount of the Common Expenses.

1.14 “Condominium Documents” means this Declaration; the Surveyor’s Plat, copies of which are attached hereto as Exhibit “A;” Articles of Incorporation of Sanibel Moorings Condominium Association, Inc. attached as Exhibit “B;” and Bylaws attached hereto as Exhibit “C.” The Rules and Regulations and subsequent amendments thereto need not (but may) be recorded in the County Public Records in order to be valid.

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

1.16 “Condominium Property” means the land and property interests subjected to condominium ownership under this Declaration, all improvements on the land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

1.17 “County” means the County of Lee, State of Florida.

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

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

1.19.1 One natural person, spouse, if any, and their custodial children, if any.

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

The reference to “natural” herein is intended to distinguish between an individual and a corporation or other artificial entity.

1.20 “Fixtures” means 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 in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

1.21 “Guest” means any person who is not the Unit Owner or a tenant 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. For purposes of this document, “Guest” does not apply to anyone renting through the Sanibel Moorings Rental Program, although Guests may be required to register through the Sanibel Moorings Rental Program, as further provided in Articles 15 and 16.

1.22 “Insurable Improvements” shall mean the “Building” as defined in Article 1.7 of this Declaration.

1.22 “Lease” means the grant by a Unit Owner of a right of use of the Owner’s Unit for consideration.

1.24 “ Limited Common Elements” shall include property which is reserved for the use of a certain Unit to the exclusion of other Units as reflected on the condominium plat or in this Declaration. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area (e.g., air conditioning compressors) shall serve to define the area as a Limited Common Element.

1.25 “Porch” is an attachment(s) and a limited common element for the exclusive use of the unit attached to.

1.26 “Primary Occupant” means a natural person designated for occupancy of a Unit when title to the Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

1.27 “Renter” is a person(s) who occupies a unit through the Association Rental Program and pays a fee.

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

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

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

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

1.32 “Voting Interest” means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters. There are 122 Units, so the total number of voting interests is 122.

2. STATEMENT OF CONDOMINIUM DECLARATION. The Mariner Group, Inc. submitted the property described in Exhibit “A” hereto and as described above to condominium ownership in accordance with Florida Statutes.

3. CONDOMINIUM NAME. The name by which this condominium is identified is "Sanibel Moorings Condominium."

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

5. SURVEY AND GRAPHIC DESCRIPTION. A survey of the land submitted herewith to condominium ownership and a plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the surveyor's plat which is attached as Exhibit “A.”

6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS. The voting rights of the Owner of each Unit shall be 1/122nd (one voting interest per Unit). The sharing of Common Expenses and ownership of Common Elements and Common Surplus shall be on a 1/122nd basis.

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 8 below. The Common Elements include without limitation the following.

7.1.1 The Land.

7.1.2 All portions of the building and other improvements outside the Units, including all Limited Common Elements.

7.1.3 Easements over, through, above and beneath each Unit for conduits, ducts, plumbing, wiring and other facilities for furnishing utility services to other Units or Common Elements.

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7.1.4 An easement of support in every portion of the Condominium which contributes to the support of the buildings.

7.1.5 The Fixtures and installation 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 provision of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium, unless released by all record title holders, lienors, and beneficiaries of such easement. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of the Unit Owners with respect to such easements.

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

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

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

7.2.4 **Perimeter Wall.** If any portion of the common elements encroaches upon any unit or any unit encroaches upon the common element or another unit as a result of the construction, repair, shifting, settlement or movement or any portion of the improvements, a valid

easements for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

7.2.5 Troughs and Gutters. Easements over overhanging troughs or gutters, downspouts and discharge therefrom of rainwater and the subsequent flow thereof over condominium units or any of them.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership on the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately 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. CONDOMINIUM UNITS AND APPURTENANCES. Condominium Units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A." The horizontal and vertical boundaries of the Condominium Units shall be as follows:

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

8.1.1 Upper Boundaries: The underside of the finished undecorated ceiling of the unit extended to meet the vertical boundaries.

8.1.2 Lower Boundaries: Upper floor units: the plane of the upper surface of the concrete floor slabs.

8.1.3 Lower Boundaries: Ground floor units: the upper surface of the concrete floor slabs.

8.2 Vertical Boundaries. The vertical boundaries of the unit shall be:

8.2.1 Exterior building walls – the interior plane of the outside concrete block or walls of the condominium building bounding a unit and where there is attached to the building a porch, stairway or other portion of the building serving only the unit being bounded, such boundaries shall be deemed to include all of such structures and fixtures thereon.

8.2.2 Interior building walls - the center line of the wall bounding the unit.

8.2.3 Apertures. Where there are apertures in any boundary, including but not limited to, windows and doors, such boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass or

other transparent material, and all framing and casing therefor, shall be included in the boundaries of the unit.

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

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

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

8.4.2 Easements. For the benefit of the Unit.

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

8.4.4 Porches. The porches abutting each Unit are Limited Common Elements appurtenant to the Unit which they abut, the use of which is restricted to the Unit to which they are appurtenant.

8.4.5 Assigned Parking. The Board may assign parking spaces. The space assigned to owners in the Rental Program must be reserved for renters except when owner is in residence.

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

8.6 Cross Easements. The appurtenances shall include the following easements from each Unit Owner to each other Unit Owner and the Association:

8.6.1 Ingress and Egress. Easements through the Common Elements for ingress and egress.

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

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

8.6.4 Utilities. Easements over, through, above and beneath the Units and other portions of the Condominium Property for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services to the Units and the Common Elements; provided, however, that such easements through a Unit shall be only according to the plans and specifications for the Unit building or as the building is constructed unless approved in writing by the Unit Owner.

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

9.1 Association Maintenance. The maintenance, repair and replacement of all Common Elements (except those Limited Common Elements for which this Declaration delegates responsibility to the Unit Owner) and Association Property shall be performed by the Association, and the cost is a common expense, except as may otherwise be specifically noted with respect to Limited Common Elements. Same shall include, but not be limited to, exterior painting, roofing, maintenance of parking and storage facilities, and maintaining portions of the Condominium Property exposed to the elements, but shall not include maintenance of screen frames or porch enclosures. The Unit Owners shall maintain the window installations originally installed by the Developer, or replacements thereof of like kind and quality. Same includes the window frame and encasement, the plate glass, and the exterior caulking thereof. The Unit Owners shall be responsible for interior locking mechanisms, interior caulking (if necessary or desired) the window sill (unless part of the window frame) and glass breakage. The Association shall, through the Board of Directors, have the authority to determine, when windows need to be replaced, the style of windows, and same shall not require a vote of the Unit Owners, it being understood that window styles change periodically, as do applicable codes. Owners will not be required to replace windows and doors for style only. The Association will be responsible for balconies. Glass enclosures or partitions that were not installed as part of the original construction, such as porch enclosures (if permitted as provided elsewhere in the Condominium Documents) are not the responsibility of the Association, and shall be the responsibility of the affected Owner. The Association's maintenance responsibility includes, without limitation; all electrical conduits located outside the Unit; plumbing fixtures and installations located outside the Unit; installations located within a Unit but serving another Unit; or installations located outside the Unit for the furnishing of utilities to more than one Unit or the Common Elements. The Association shall be responsible for the maintenance and repair of the drywall constituting the Common Elements of the Condominium, including the interior surface of the exterior boundary walls, as well as the ceiling of the Unit. Decorations of such surfaces (including but not limited to paint, wallpapering, "popcorn," paneling, etc.) are the responsibility of the Unit Owner. The Association's responsibility does not include interior non-load bearing partitions, electrical fixtures,

switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit. If, in connection with the discharge of its maintenance responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain, repair, and replace, the Association shall be responsible for reinstallation or replacement of that item, to its unfinished state (i.e., excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, etc.), provided that such items are part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality. Replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner.

9.2 Unit Owner Maintenance. Each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and those Limited Common Elements serving his Unit, if so provided herein, whether ordinary or extraordinary including, without limitation: interior partitions (assuming non-load bearing), the finishes thereof, the structural framing related thereto (assuming non-load bearing); all electrical or plumbing facilities located in the Unit, which service only the individual Unit plus all electrical facilities from the circuit breaker box, including box, inward, which service only that Unit; maintenance, repair and replacement of windows, screen doors or porch screens (including hardware and framing); sliding glass doors and the structural components thereof, including trim and caulking; Unit front entry door, except that the Association may paint entry doors when it is painting the entire buildings; all other doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit; the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and all related Fixtures and installations; appliances; all portions of the heating and air conditioning equipment (including compressors, air handlers and freon lines) and utility installations and connections serving an individual Unit, no matter where located (except that Association shall maintain chases housing freon lines), dryer vents to the point of termination (even if exterior to the Unit), air conditioner discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit); carpeting and other floor covering; door and window hardware and locks; all other facilities or Fixtures located or contained entirely within a Unit which serve only that Unit. All incoming plumbing from the master unit shut off valve inward is a specific Unit Owner responsibility. Outbound plumbing is the responsibility of the Owner until the point of connection to a vertical disposal, even if outside the Unit boundary. All said areas, if located outside of the boundaries of the Unit, are declared Limited Common Elements. Parking facilities shall be maintained by the Association. Any insurance proceeds paid to the Association with respect to any loss or damage within the Unit or Limited Common Elements which is covered by the Association's casualty insurance, and which loss would otherwise be borne by the Unit Owner, shall be paid to the Unit Owner, after the work has been completed and invoices have been submitted verifying the costs of repair, and in accordance with Articles 12 and 13 hereof.

9.3 Additional Unit Owner Obligations. In connection with his maintenance, repair and replacement obligations, the Unit Owner shall have the responsibility to obtain the prior written

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approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the external physical appearance of the Condominium Property visible from any exterior vantage; excavation; access to building roofs; removal, modification or relocation of any interior partitions, walls, whether load-bearing or not or the relocation of cabinets or appliances; relocation of utility plumbing or electrical lines or fixtures; the use of heavy or noisy equipment; such other actions as may cause concern for the peace and safety of the condominium and its residents or the aesthetics of the Condominium Property as determined by the Board. The Association may condition such approval on criteria as the Board deems reasonable, including but not limited to:

- Preservation of uniformity of appearance;
- Use of licensed and insured contractors;
- Right (but not duty) of oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Imposition of time limits in which jobs must be completed and prohibitions against major renovations during certain times of year.
- Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction.
- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.

9.4 Association as Owner's Agent. Nothing shall preclude the Association from acting as the Owner's agent and obtaining the services of Contractors to perform Unit Owner maintenance responsibilities, provided that the Association and the Owner so agree, or when necessary (as determined by the Board) to facilitate projects involving the Association's maintenance of the Condominium Property, and provided that the Owner is deemed to consent to reimbursement of expenses incurred, secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a lien for Charges. Unit Owners shall at all times be responsible to ensure, whether or not Association approval is required for work being done within the Unit, that all Contractors and other persons performing services for the Unit or Owner are properly licensed and insured, including required Worker's Compensation insurance. The Unit Owner shall hold the Association harmless from any claim of any nature arising out of failure to comply with this requirement.

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9.5 Porches. Porches are Limited Common Elements for the exclusive use of the Unit attached thereto and an appurtenance to the Unit. The Unit Owner who has the right to the exclusive use of said Porch shall be responsible for the maintenance, care and preservation of: Porch floor coverings (the Board may prohibit certain types of floor coverings or require the removal of existing coverings when necessary for the structural preservation of the building); the screens and frames; storm shutters and other enclosures; fixed and/or sliding glass doors and affiliated framing and hardware thereof; the wiring, electrical outlet(s) and Fixture(s) on or servicing the Porch; ceiling fans; and the replacement of light bulbs. The Association shall be responsible for structural maintenance, repair and replacement of Porch floors, ceilings and exterior portions, and also the building walls enclosed by the Porches, provided that painting and regular maintenance (nonstructural) of building walls enclosed by Porches shall be done by the Unit Owners, subject to the uniformity of appearance (e.g., color) and other criteria set forth in these Condominium Documents, or as determined by the Board. However, the Association may, if it elects, paint Porch walls and ceilings in connection with the painting of the building as either a common expense, or on a voluntary participation basis, as determined by the Board of Directors.

9.6 Unit Floor Coverings. In conformance with Article 14.2, 14.2.1 and 14.2.2 which is intended, among other things, to guarantee the occupants of all units the right to peaceful possession, reasonable comfort and convenience and freedom from unreasonable noise intrusion, including but not limited to that transmitted through the concrete slab which serves as the ceiling of first floor units and the floor of second floor units, the flooring of all second floor units shall be carpeted except the bathrooms, kitchen, utility closet and a 4 foot by 4 foot area immediately inside the entry door. All carpeting shall be medium to heavy carpet pad, of at least sixteen (16) ounce yarn per square yard of carpet and fifty (50) ounce of rubber padding per square yard. Second floor units that currently have substitute flooring where not allowed by this section, regardless of the circumstances surrounding the substitution, will be grandfathered until such time that the substitute flooring requires major repair and/or replacement. During the grandfathered period, the owner shall install approved felt (or equivalent) pads to all furniture or other items that might be expected to be on any substitute flooring, either temporarily or permanently, as well as any other remedies needed to be in conformance with Articles 14.2, 14.2.1 and 14.2.2. Casters on any such furniture are not allowed on any hard surfaced floors.

9.7 Alterations by Unit Owners. No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior, or in any manner change the appearance of any portion of the condominium visible from the exterior, or make any structural change within the Unit interior without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the condominium in part or whole. "Structural" alterations include, but are not limited to: installation of new or relocation of existing electrical, plumbing, air conditioning or heating installations; installation of new or relocation of existing Fixtures or appliances such as toilets, sinks, tubs, showers, dishwashers, refrigerators, or ranges; the removal or modification of any partition (whether load bearing or not),

door, window or screen; raising ceilings; or relocating kitchen or bathroom cabinetry. For purposes of this provision, the term "structural" shall also include the addition, removal, or relocation of any plumbing line or fixture, any electrical line or fixture, or the removal or creation of any interior partition (including but not limited to "wing walls") whether load-bearing or not. Replacement of cabinetry, appliances, Fixtures, etc., with substantially equivalent installations, in the same location, shall not be deemed "structural" and shall not require approval of the Association. Further, "structural" work shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permits from the appropriate governmental agency, whether or not mentioned above. The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in Sanibel Moorings Condominium, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the Unit Owners in the manner provided in Article 9.9 of the Declaration of Condominium, regardless of the cost or expense of such addition or alteration. If any Unit Owner requests approval of any structural alteration or modification, the Association may permit such removal or modifications if same would not materially affect or interfere with the utility services constituting Common Elements, if any, located therein, the structural integrity of the building or create a nuisance or disturbance to neighboring Units.

9.8 Additional Unit Owner Responsibility for Alterations and Additions. If a Unit Owner makes, or has made any modifications, installations, or additions to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for the insurance, maintenance, care, and preservation of the modifications, installations or additions and shall execute such documents as the Association may promulgate accepting said financial responsibility. Any modification, alteration, or addition to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the alteration, addition, or improvement (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of lien for Charges of equal dignity to the common expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent.

9.9 Alterations by Association. There shall be no material alterations or substantial additions to the Common Elements or association real property by the Association, except as authorized by the Board of Directors. Provided, however, that if any such alterations or additions require or obligate the expenditure of Association funds of more than five percent of the Association's budget for the fiscal year in which the work is authorized, including reserves, the Board shall obtain approval of a two-thirds (2/3) of voting interests present (in person or by proxy) and voting at an Association meeting, or by written agreement of two-thirds (2/3) of the entire voting interests. Necessary maintenance of the Common Elements, or Association Property regardless of the level of expenditure, is the responsibility of the Board of Directors.

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

9.11 Negligence Damage Caused by Condition of Unit. Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his intentional act or negligence, or by that of any member of his Family or his or their guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a Unit, if caused by the Owner's negligence, shall cause damage to the Common Elements, Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association relative to damage to the Condominium Property, to the extent the Association might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon said Unit Owner being adequately insured based on local standards and conditions. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability on the Association, but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in condominiums located in Florida's coastal communities, condominiums in general, including but not limited to damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, and water seepage and leakage. If one or more of the Units involved is not occupied at the time a damage incident is discovered, the Association may enter the Unit(s) without prior notice to the

Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for Charges. Unit Owners in residence at any time are required to shut off the unit master valve when the Unit will be unoccupied on an overnight basis, and failure to do so will create a presumption of negligence. If the Unit is rented through the Association's Rental Program, the Association shall be responsible for shutting off the unit master valve after the tenant(s) vacate the Unit.

9.12 Combination of Units. Two contiguous Units may, subject to the prior written approval of the Board of Directors, be combined in to a single living space. The Board may disapprove such request, based upon its discretion, and upon a finding that the proposed combination of Units is not in the best interests of the Association. The Board, as a condition of approving the combination of Units, may require sealed plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association that the proposed work affiliated with the Unit combination complies with all applicable laws, codes, and ordinances. The Board may further require such Professional Engineers or Architect's certification at the end of the work, certifying that said work has been performed in accordance with the plans and specifications, and in accordance with all applicable laws, codes, and ordinances. The Owner (and his successor in title) shall be required to indemnify and hold the Association and Unit Owners harmless for any claim of any nature arising from the combination or reconfiguration of the Unit. Should the Board, in its discretion, determine that the Association must retain independent professionals to review the request, including but not limited to engineers, architects, or attorneys, the Association may also condition approval of the requesting Unit Owner's agreement to reimburse the Association for said fees and expenses. Units which have been combined shall, after combination, be used only as a "single family" residence (including rental rights), and may not be used as two living quarters. Units which have been combined shall constitute two units for purposes of sharing common expense, ownership of Common Elements, and voting rights. If units which have been combined are sold, they shall be sold as a single living quarters, unless specifically approved by the Board to the contrary. If combined Units are to be re-configured into two living spaces, the Board shall have the authority, using the same criteria listed above for combination of Units, to approve the reconfiguration. Without limitation, the Board shall have the authority to require plans from an Architect or Professional Engineer licensed to practice in Florida, certifying to the Association, that the reconfiguration of the Units into two living spaces is done in accordance with all applicable laws, codes, and ordinances and in accordance with the original configuration of the Units.

10. ASSESSMENTS AND CHARGES. Assessments against Owners shall be made by the Board of Directors of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the same basis as their percentage of ownership of the entire condominium as set forth in Article 6.

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10.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while he/she is the Unit Owner. The grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his/her share of the Common Expenses including attorney's fees and other costs of collection incurred by the Association up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made.

10.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within thirty (30) days from the date when they are due shall incur a late fee and bear interest in an amount as determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board may accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such parcel, with interest, late Charges and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The Association may also accelerate all Assessments or Charges which are accrued, but not yet due, in the manner provided by law. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of Condominium. Upon payment the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien.

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

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

10.5 First Mortgagee. The priority of the Association's lien and the obligation for payment of past due Assessments in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2003), as amended from time to time.

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

10.7 Certificate of Unpaid Assessments. Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him/her with respect to his/her Unit.

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

11. ADMINISTRATION AND MANAGEMENT OF CONDOMINIUM. The administration and management of the condominium shall be by the Condominium Association, which shall have by and through its officers and Directors, such powers, authority and

responsibilities as are vested in the officers and Directors of a corporation not-for-profit under the laws of the State of Florida, including but not limited to those set forth more specifically elsewhere in the Condominium Documents. The Association shall have authority to enter into management and other agreements concerning the matters of common interest through its officers. The management of the Association and election of the members to the Board of Directors shall be as set forth in the Bylaws. Without limiting the foregoing, the Association shall have the following powers and duties:

11.1. Access. The irrevocable right of access to each Unit during reasonable hours as may be necessary for the maintenance, repair, inspection or replacement of any Common Elements therein, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to any other Unit or Units, or to determine compliance with the terms and provisions of this Declaration, the exhibits annexed hereto, and the Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time. The Association may require that a pass key be posted for each Unit and may, if determined advisable by the Board, implement a master key system.

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

11.3 Recordkeeping. The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times.

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

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

11.6 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property. The power to acquire or transfer real property or otherwise convey and mortgage real property for the use and benefit of its members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner shall be required to purchase (or mortgage) a Unit through foreclosure or deed in lieu of foreclosure. Leasing of Units, Common Elements or Association Property may be approved by the Board of Directors, as well as the Lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

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

11.8 Fees for Use of Common Elements. Pursuant to Section 718.111(4), Florida Statutes (2003), as amended from time to time, the Board of Directors shall have the authority to set use fees for private use of Common Elements or Association Property, as well as the regulations and policies pertaining to such use.

11.9 Lease of Association Property or Common Elements. The power to Lease Association Property or Common Elements, as determined by the Board of Directors. No use fee may be charged against a Unit Owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement.

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

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

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

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

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

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

As used in this section, "Association" shall include within its meaning all of the Association's Directors, officers, committee members, employees, agents, contractors (including management companies or managers), subcontractors, successors, and assigns.

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

12. INSURANCE. Insurance provided by the Association shall be governed by the following provisions:

12.1 Authority to purchase. All insurance policies purchased by the Association shall be for the benefit of the Association and the unit owners and their mortgagees, as their interest may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgages of unit owners. The Board of Directors shall procure insurance that is reasonably in the best interests of the unit owners and the Association. Annually, in conjunction with the annual meeting, the Board of Directors with responsibility for the insurance will distribute a summary of all coverages including a listing of self insured elements, for the purpose of allowing members to instruct the Board to obtain additional coverage(s) and/or amounts if the members by majority vote elect to do so. Unit owners may obtain other or additional coverages at their own expenses. All policies purchased by the Association must be written by insurance companies authorized to do business in the State of Florida.

12.2 Coverage.

12.2.1 Casualty. All buildings and improvements upon the land, including units and all personal property of the Association included in the condominium property, are to be insured in an amount equal to the insurable replacement value, excluding foundation and excavation costs as determined annually by the Board of Directors of the Association, and all such insurance must be obtained, if possible, from the same company. Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general casualty, flood and extended coverage insurance with a responsible insurance company, or through alternate sources as may be available, upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the full replacement or insurable value thereof, less a commercially reasonable deductible, provided the Board may exclude foundation and excavation costs in its discretion. Such coverage shall provide protection against:

12.2.1.1 Loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and flood disaster insurance.

12.2.1.2 Such other risks as from time to time shall be customarily covered with respect to building similar in construction, location and use, including, but not limited to, vandalism and malicious mischief.

12.2.2 Public liability. In such amounts and with such coverage as shall be required by the Board of Directors of the Association with cross liability endorsements to cover the liability of the unit owners as a group to a unit owner.

12.2.3 Worker's compensation. As shall be required to meet the requirements of law.

12.2.4 Association insurance. Such other insurance as the Board of Directors of the Association in its discretion, may determine from time to time to be in the best interest of the Association and the unit owners, including Director's liability insurance or other insurance that an institutional mortgagee may reasonably require, so long as it is the owner of a mortgage on any condominium parcel.

12.3 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association.

12.4 Assured. All insurance policies purchased by the Association shall provide that all proceeds covering casualty losses shall be paid to the Association, as represented by the Board of Directors. All insurance policies shall require written notification to each institutional mortgagee

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not less than ten (10) days in advance of cancellation of any insurance policy insuring the condominium policy.

The Board of Directors shall receive such proceeds as are paid, and hold same for the purposes elsewhere stated herein and for the benefit of the unit owners and the mortgagees in the following shares:

12.4.1 Common elements. Proceeds on account of common elements shall be held in as many undivided shares as there are units in each building, the shares of each unit owner being the same as his share in the common elements, as same are in hereinabove stated.

12.4.2 Units. Proceeds on account of units shall be held in the following undivided shares:

12.4.2.1 Partial destruction. When the building is to be restored, for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner.

12.4.2.2 Total destruction. When the building is to be restored, for the owners of all units in the building in proportion to their share of the common elements appurtenant to their unit.

12.4.2.3 Mortgagee. In the event a mortgagee endorsement has been issued to a unit, the share of the unit owner shall be held for the mortgagee and the unit owner as their interests appear. In no event shall any mortgagee have the right to demand the application of insurance proceeds to any mortgage or mortgages which it may hold against the units, except to such extent as said insurance proceeds may exceed the actual cost of repair or restoration of the damaged building or buildings, and no mortgagee shall have the right to participate in the determination as to whether or not improvements will be restored after casualty.

12.5 Distribution of proceeds: Proceeds of insurance policies received shall be distributed to or for the benefit of the beneficial owners in the following manner:

12.5.1 Reconstruction or repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by such mortgagee.

12.5.2 Failure to reconstruct or repair. If it is determined in the manner elsewhere provided that the damages for which the proceeds are paid shall not be reconstructed or

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repaired, the remaining proceeds shall be distributed to the beneficial owners; remittances to unit owners their mortgagees being paid jointly to them. This is a covenant for the benefit of any mortgagee of a unit and may be enforced by and such mortgagee. If such determination results in only some units or buildings not being rebuilt, the proceeds allocable to that unit or building shall not be used to reconstruct or repair any other unit, building or common element, but shall be considered surplus funds to be distributed to the displaced owners and their mortgagees, remittances to unit owners and their mortgagees being payable jointly to them.

12.5.3 Association as agent. The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association.

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

13.1 Common Elements. If the damaged improvement is any of the Common Elements, the damaged Common Element shall be reconstructed or repaired.

13.2 The Building.

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

13.2.2 Major damage. If the damage renders more than 50% of the Units untenable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 75% of the entire voting interests agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed two (2) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties.

13.2.3 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings, as set forth in the Surveyor's Plats, or if not, then according to plans and specifications approved by the Board of Directors.

13.3 Responsibility. If the damage includes those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for the expense of reconstruction and repair after casualty of said portion of the work,

although the Association may perform the work on behalf of the Owner. When the Association is the recipient of insurance proceeds, such as in cases where a portion of the Building is insured by the Association, but is the repair responsibility of the Unit Owner, the Association may condition the disbursement of insurance proceeds on obtaining reasonable verification of, appropriate steps to ensure that, the work is done and that the Contractor is paid for the performance of said work. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

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

13.5 Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including shortfalls occasioned by a deductible), or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners who own the damaged Units, and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Expenses.

13.6 Termination of condominium if not reconstructed. If the Owners do not vote to reconstruct the condominium by vote required in Article 13.2.2 hereof, the condominium shall be terminated in accordance with the procedures set forth in Article 19.2 and 19.3 hereof.

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

14.1 Occupancy of Units; Single Family Residence. A condominium Unit shall be used only as a Single Family residence. Owners (and their Family members and tenants) may use Units for "home office" or "telecommuting" purposes, provided that such uses do not involve customers or clients coming onto the Condominium Property, the postage of any signage in the Condominium, the storage of equipment, products, or materials in the Condominium, nor more than two regular deliveries per day of correspondence or similar items from customary express delivery services.

14.2 Nuisance. The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, nor which becomes a source of annoyance to the condominium residents. All property shall be kept in a neat and orderly manner. The Common Elements shall be used for

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the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

14.2.1 No nuisances shall be allowed upon the condominium property, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents. All parts of the property shall be kept in a clean and sanitary conditions, and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist. No unit owner shall permit any use of his unit or make any use of the common elements which will increase the rate of insurance upon the condominium property.

14.2.2 Noise. No unit owner shall make or permit any disturbing noises in the buildings made by himself, his family, servants, employees, agents, visitors, etc. or permit anything by such persons that will interfere with the rights, comforts or convenience of other unit owners. In addition, the hours between 10:00 PM and 8:00 AM are to be quiet hours for the entire condominium complex.

14.3 Children. Children shall not be allowed to play on the stairways, nor shall children under the age of 8 years old be allowed in any of the Common Element areas unaccompanied by an adult.

14.4 Pets. Small, noiseless household pets are permitted, subject to reasonable limitations as to their use, restraint and conduct as may be further promulgated by the Board of Directors from time to time. Renters and guests will not be permitted to have pets at any time without express approval of the Board of Directors. Owners having pets shall promptly remove any and all pet droppings from condominium property, and shall keep pet leashed at all times when the pet is on condominium elements.

14.5 Parking. Parking lots shall be used for parking Owners' and guests' automobiles only. "Parking" means to leave an automobile in a designated space. There shall be no storage of boats or boat trailers in the parking lots. Parking of boats or trailers shall be at the discretion of the General Manager, but shall not exceed a seventy-two (72) consecutive hour period. This seventy-two (72) hour period is intended to provide adequate time for parking or storage arrangements at the beginning and end of rental or residential periods for renters and owners respectively. Boats or boat trailers parked or stored in Sanibel Moorings parking lots in violation of this provision may be towed at the expense of the boat Owner.

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

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15. GUEST OCCUPANCY. A “guest” is defined as a person who enters upon the Condominium Property at the invitation of a Unit Owner or tenant, (or their respective families) for the purpose of visiting the owner or tenant. Notwithstanding anything herein to the contrary, guests may be required to register with the Association by giving the Association the name, emergency contact and permanent address of the prospective guest(s). There is no restriction against guest usage, except as provided below, provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses. The Board of Directors may establish additional restrictions on guest usage of Condominium facilities, such as, but not limited to, maximum number of guests who may use common facilities, maximum number of common facility usages per guest, and the like.

15.1 Overnight Guests When Unit Owner or Tenant is in Residence. Unit Owners and Tenants (and their respective families) may have related or unrelated overnight guests, so long as the unit owner or tenant is in simultaneous residence. There is no requirement for registration of these types of overnight guests with the Board or through the Sanibel Moorings Rental Program.

15.2 Overnight Guests in the Absence of the Unit Owner or Tenant. Tenants are not permitted to have overnight guests (related or non-related) in the absence of the tenants’ simultaneous residence. Unit Owners are permitted to have overnight guests in the absence of the unit owner but only if the guest registers through the Association Rental Program, as further provided in Article 16.1 herein. If the owner requests that the rental expense recovery fee be waived for overnight guests in the absence of the owner, the owner and/or guest may be required to sign a statement that the owner is not receiving compensation, either in the form of money, or the exchange of goods and services, for the use of the unit.

16. LEASING. The Lease of a Unit is defined as occupancy of the Unit by any person other than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, etc.). The term “leasing” and “renting” shall be used interchangeably for the purpose of this Declaration of Condominium. The term “tenant” and “lessee” shall likewise be used interchangeably. All Leases shall be for periods of no less than two (2) days.

16.1 Sanibel Moorings Rental Program. The Association shall have the authority to operate a rental program for the benefit of the unit owners wishing to rent or lease their units. All such leasing and renting shall be through the Association Rental Program and according to the rules and regulations established by the Board of Directors. Units may only be rented or leased through the Rental Program.

Notwithstanding any provision in the Declaration of Condominium, Articles of Incorporation, By-Laws, or Rules and Regulations (“Condominium Documents”) to the contrary, the lease of

units shall be limited to leases placed through the rental management program operated by the Association (hereinafter "Association Rental Program"). The lease or rental of a unit is defined as any grant of the right to exclusive use of the unit for consideration, which includes the payment of monies, the exchange of goods and services, and any other use a unit (other than visitation as previously described) by a person other than the owner, except that unit owners may permit immediate family members to occupy units, without payment of the Expense Recovery Fee, subject to registration through the Association Rental Program. **Immediate family shall be the mother, father, husband, wife, domestic partner, children, step-children, grandchildren, brothers and sisters of record owners.** Owners may also offer their unit to other persons that are not immediate family members without the payment of the rental expense recovery fee, **if no money, goods and services, or other substantial value is exchanged.** This prohibited exchange of goods and services or substantial value can include, for instance, an agreement between two owners whereby an owner will allow his unit to be used by another owner's guests in exchange for reciprocal uses, either at Sanibel Moorings or elsewhere. If any such consideration is received, the owner will be charged the then current rental expense recovery fee based on published rates. All overnight guests in the absence of the owner shall register with the Association through the Sanibel Moorings Rental Program. The unit owners and/or guests may be required to sign a statement that there has been no exchange of money or other compensation if the owner and/or guest is requesting that the rental expense recovery fee be waived. Rental of units through the Association Rental Program shall be subject to a form of Property Management and Rental Agreement, which may be adopted by the Board of Directors, and amended by the Board from time to time. The Property Management and Rental Agreement shall provide for the respective rights and duties of the Association and unit owners who rent their units through the Association Rental Program. The Property Management and Rental Agreement shall provide for the payment of an Expense Recovery Fee and other fees related to the Rental Program to the Association, as consideration for the provision of services under the Property Management and Rental Agreement. If a Property Management and Rental Agreement has not been executed by the unit owner, the unit may not be leased, as defined above.

The Board of Directors of the Association shall have the authority to hire such employees, agents, brokers, and other persons as the Board deems advisable for the operation of the Association Rental Program. The Association may structure the Association Rental Program through such means as the Board of Directors deems advisable, including without limitation employment of employees, the appointment of officers (including non-owners), the hiring of agents, the lease of condominium property to third parties, independent contractor arrangements, or the creation of subsidiary corporations. The expenses of operating the Association Rental Program are a common expense. The common elements or a unit (e.g. if the Association chose to rent a unit for such purposes) may be used for operation of the Association Rental Program. Any surplus accruing to the Association on account of the Association Rental Program shall be deemed common surplus of the Association. As the Association is a not-for-profit corporation, all surplus accruing to the Association by virtue of operating the Association Rental Program may not be distributed to unit owners, but may be used to offset common expenses for all unit

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owners, may be placed into reserves, or may be used for capital improvement projects (even if same constitute a material alteration or substantial addition to common elements or Association property), as deemed advisable by the Board of Directors.

NO UNIT MAY BE LEASED EXCEPT THROUGH THE ASSOCIATION RENTAL PROGRAM.

16.2 Liability. The liability of the Unit Owner under the Condominium Documents shall continue notwithstanding that his or her Unit may be leased or rented as provided herein.

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

17.1 Proposal of Amendments. An amendment may be proposed by either a majority of the Directors or by twenty-five percent (25%) of the entire voting interests.

17.2 Proposed Amendment Format. Proposals to amend the existing Declaration of Condominium shall contain the full text of the article to be amended. New words shall be underlined and words to be deleted shall be ~~lined through~~ with hyphens. If the proposed change is so extensive that this procedure would hinder rather than assist understanding, a notation must be inserted immediately preceding the proposed amendment saying, "SUBSTANTIAL REWORDING OF DECLARATION OF CONDOMINIUM. SEE ARTICLE NUMBER FOR PRESENT TEXT."

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

17.4 Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of sixty-seven percent (67%) of the voting interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of sixty-seven percent (67%) of the entire voting interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the officers of the Association, upon Board approval, without need for Association membership vote.

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

17.6 Automatic Amendment. Whenever Chapter 718, Florida Statutes (2003) Chapter 617, Florida Statutes (2003) or other applicable statutes or administrative regulations are amended to impose procedural requirements less stringent than set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements. The Board of

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Directors, without a vote of the Owners, may adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2003), or such other statutes or administrative regulations as required for the operation of the Association.

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

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

18.1 Owner Approval. Except as provided in Article 13, the agreement of 100% of the Owners and the holders of liens, or such other percentage as may be specified in the Act, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyance of land. The termination shall become effective when such agreement has been recorded in the public records.

18.2 Shares of Unit Owners After Termination. After termination of the Condominium, the Owners shall own the property as tenants-in-common in undivided shares, and the holders of mortgagees and liens against the Unit or Units formerly owned by such Owners shall have mortgages and liens upon the respective undivided shares of the Owners. Such undivided shares of the Owners shall be as set forth in Article 6 hereof. All funds of the Condominium held by the Association, except for the reasonably necessary expenses of winding up, shall be disbursed to the Unit Owners and mortgagees as their interests may appear in the shares set forth in Article 6. The costs incurred by the Association in connection with a termination shall be a common expense.

18.3 Following Termination. The property may be partitioned and sold upon the application of any Owner. Provided, however, that if the Board of Directors following a termination determines to accept an offer for the sale of the Condominium Property, each Owner shall, by his acceptance of a deed to his Unit, be deemed to have granted power of attorney to the Board of Directors to execute such deeds and other documents required to effect sale. In such event, any action for partition shall be held in abeyance pending sale, and upon the consummation thereof shall be discontinued by all parties thereto.

19. CONDEMNATION.

19.1 Awards. The taking of all or any part of the Condominium Property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty.

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

19.2 Determination Whether to Continue Condominium. Whether the condominium will be continued after condemnation will be decided in the same manner as repair after casualty as set forth in Paragraph 14 hereof.

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

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

19.5 Units Reduced but Tenatable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made tenatable, 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.

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

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

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

19.6 Units not Tenatable. If the taking of any entire Unit or so reduces the size of the Unit that it cannot be made tenatable, the award for the taking of the Unit shall be used for the

following purposes in the order stated, and the following changes shall be effected in the condominium:

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

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

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

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

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

20. COMPLIANCE AND DEFAULT.

20.1 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, this Declaration, the documents creating the Association, the Bylaws and the Rules and Regulations. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

20.1.1 The Association;

20.1.2 A Unit Owner; or

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20.1.3 Anyone who occupies a Unit as a tenant or is a guest in a Unit.

20.2 Waiver of Rights. The failure of the Association to enforce any right, provision, covenant, or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived 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.

20.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a Unit Owner, tenant, guest, or invitee or the Association to comply with the requirements of the Condominium Act or the Condominium Documents the prevailing party shall be entitled to recover the costs and expenses of the proceeding and a reasonable attorney's fee before trial, at trial and on appeal. The Association may also recover attorney's fees it incurs because of noncompliance with the Condominium Documents in cases where no court action is filed including, but not limited to, arbitration and pre-litigation fees incurred in the collection of delinquent Assessments, and fees reasonably incurred by the Association in obtaining compliance with the Condominium Documents. Said costs and fees shall be secured by a lien for Charges, as provided in Article 10.8 hereof.

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

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

20.6 Notice of Lien or Suit.

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

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

20.6.3 Failure to Comply. Failure of an Owner to comply with this Section 21.6 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

21. MISCELLANEOUS PROVISIONS.

21.1 The covenants and restrictions as herein contained, or forming a part of the Condominium Documents, shall be deemed to run with the land.

21.2 If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

21.3 These Condominium Documents shall be binding upon the heirs, nominees, successors, administrators, executors and assigns of all Unit Owners.

21.4 All notices shall be given as provided in the Bylaws.

21.5 **There shall be no limitation upon sale, Lease or occupancy of any Unit based upon race, creed, color, sex, religion, national origin, handicap, or familial status. The Association may make reasonable accommodations, including reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the condominium premises.**

21.6 The Developer granted to each Unit Owner a non-exclusive easement for streets, walks and other rights of way serving the Unit as a part of the Common Elements. All liens and leaseholds shall be subordinate and subsequent to the rights of easement herein granted to each Unit Owner.

21.7 All persons joining this Declaration subjects his interest to the provisions of this Declaration and the provisions of Chapter 718, Florida Statutes.

21.8 In the event of a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act, Section 718, Florida Statutes, shall control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the Bylaws.

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21.9 The Board of Directors of the Association shall be responsible for reasonably interpreting the provisions of this Declaration and of any exhibits attached hereto.

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

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