



pursuant to this Declaration.

**4.5. COMMON AREA** – Has the same meaning as “Common Element” as used in the Florida Condominium Statute.

**4.6 LIMITED COMMON AREA** – Has the same meaning as “Limited Common Element” as used in the Florida Condominium Statute and means the portions of the Common Areas which are reserved for the use of a certain unit or units to the exclusion of other units..

**4.7 COMMON AREA DESCRIBED** - The condominium property not included within the units including, but not limited to:

(a) The land, except the ground space beneath the first level of the Duplex units, the garage area under the Four Plexes and the boat slips, all of which are Limited Common Areas.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and Common Areas.

(c) An easement of support in every portion of a unit which contributes to the support of a building.

(d) The property and installation required for the furnishing of utilities and other services to more than one unit or to the Common Areas.

(e) Pool house, swimming pool and treatment plant.

**4.8. COMMON EXPENSES** - All expenses properly incurred by the Association for the Condominium.

**4.9. COMMON SURPLUS** - The excess of all receipts of the Association over the Common Expenses.

**4.10. CONDOMINIUM** – That form of ownership of real property which is created pursuant to the provisions of the Florida statutes, which is comprised of units that may be owned by one or more persons, and an undivided share in the Common areas. (See also Condominium Parcel)

**4.11. CONDOMINIUM DOCUMENTS** - This Declaration and attached exhibits. All the condominium documents shall be subject to the provisions of this Declaration and their order of precedence shall be as follows: (1) Declaration; (2) Articles of Incorporation (3) Bylaws; (4) Rules .

**4.12. CONDOMINIUM PARCEL** - A unit together with the undivided share in the Common Areas.

**4.13. CONDOMINIUM PROPERTY** - The lands and personal property, both tangible and intangible, subject to condominium ownership, whether or not

contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

**4.14. FAMILY** - Means a person or two or more persons, each of whom is related to each of the others by blood, marriage or adoption; or not more than two adult persons not so related and the children of either or both, who reside together as a single non-profit housekeeping unit.

**4.15. GUEST AND INVITEE** – Guest means any person who is physically present in or occupies a unit on a temporary basis at the invitation of the owner without the payment of consideration. Invitee means anyone, such as a repairman, who is physically present in or occupies a unit on a temporary basis at the invitation of the owner, usually for payment of consideration.

**4.16. INSTITUTIONAL FIRST MORTGAGEE** - Means the mortgagee (or its assignee) of a first mortgage upon a Condominium Parcel, which mortgagee is a bank, savings and loan association, mortgage banker, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, and any agency of the United States of America. The term also refers to any holder of a first mortgage against a Condominium Parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

**4.17. MAJORITY:** - Means 50% plus one.

**4.18. OCCUPANT or OCCUPY** - When used in connection with a unit, means any person who is physically present in a unit on two or more consecutive twenty four hour periods.

**4.19. OPERATION** - The administration and management of the Condominium Property.

**4.20. PERSON** - An individual, corporation, trust or other legal entity capable of holding title to real property.

**4.21. RENTAL** - Means the grant by a owner of a temporary right of use of the owner's unit for consideration.

**4.22 SPECIAL ASSESSMENT** – Any assessment levied against owners other than the assessment required by the annual budget.

**4.23. UNIT OWNER** – A record owner of legal title to a condominium parcel. The term “owner” is synonymous with unit owner.

## **5. UNITS: USE, OWNERSHIP, EASEMENTS**

**5.1 - ASSOCIATION MEMBERSHIP** - Any entity holding title in Fee Simple of a unit shall be a Member of the Association.

**5.2. REAL PROPERTY** - Each unit and all appurtenances constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the Condominium Property, subject only to the provisions of the Condominium Documents and applicable laws.

**General Provisions.** The following provisions shall apply to each unit:

1. Boundaries. Each unit shall include that part of the building containing the unit which lies within the boundaries of the unit, which boundaries are as follows:

(a) Upper and Lower Boundaries. The upper and lower boundaries of each unit shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(1) Upper Boundary - the horizontal plane of the lower surfaces of the ceiling

(2) Lower Boundary - the horizontal plane of the lower surfaces of the floor

(b) Perimetrical boundaries. The perimetrical boundaries of the unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(1) Exterior building walls - the intersecting vertical plane adjacent to and which includes the exterior of the outside walls of the unit building bounding an unit and, where the outside is a door, a part thereof, a balcony, porch, or terrace, the perimetrical boundaries shall be the intersecting vertical planes adjacent to, and which include, all such structures. (Note: Exterior plaster or stucco and exterior paint are part of the Common Areas.)

(2) Interior building walls - the vertical planes of the centerlines of walls bounding an unit extended to intersections with other perimetrical boundaries.

**5.3 EXCLUSIVE USE** - Each owner shall have the exclusive use of such owner's unit.

**5.4. OWNERSHIP** - The ownership of each unit shall carry with it, as appropriate, and whether or not separately described, all of the right, title and interest of a owner in the Condominium Property which shall include, but not be limited to:

**5.4.1. COMMON AREAS** – An undivided share.

**5.4.2. LIMITED COMMON AREAS** – The exclusive use of the following Limited Common Areas: The garages in the 4-plex units and unit #9, and the ground space directly beneath the undersurface of the first floor of the Duplex units, and

the boat slips as defined in the Rules.

**5.4.3. ASSOCIATION MEMBERSHIP** – Includes an undivided share in the Common Surplus of the Association.

**5.5. EASEMENTS** - The following easements in the original Declarations of Condominium are retained and non-exclusive easements from the Association to (as applicable) each owner, to utility companies, owners families in residence, guests, renters, invitees and to governmental and emergency services, are hereby granted and created:

**5.5.1. INGRESS AND EGRESS EASEMENTS** - Easements over the Common Areas for ingress and egress to units and public ways.

**5.5.2. MAINTENANCE, REPAIR AND REPLACEMENT EASEMENTS** - Easements through the units and Common Areas for maintenance, repair and replacements.

**5.5.3. UTILITY EASEMENTS** - Easements through the Common Areas, Limited Common Areas and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services and utilities to utility customers, other units and the Common and Limited Common Areas.

**5.5.4. PUBLIC SERVICE EASEMENTS** - Access to the Condominium Property and to the units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.

**6. MAINTENANCE RESPONSIBILITY** - The responsibility for maintenance of the Condominium shall be as follows:

**6.1. BY THE ASSOCIATION** - The Association shall maintain, repair and replace at the Association's expense the Common Areas. Limited Common areas are to be maintained, repaired and replaced at the expense of owners assigned to the specific use of the Limited Common Area, unless the board decides otherwise.

**6.1.1. STRUCTURAL** - Those portions of the unit which contribute to the support of the building including, but not limited to, the perimeter walls, columns, roof and floors. Also, wiring, piping, ductwork and other mechanical, electrical or other installations or equipment serving the Common Areas or Limited Common Areas.

**6.1.2. NEGLIGENCE** - If the maintenance, repair and/or replacement of any of the Common Areas, Limited Common Areas, the items in 6.1.1 or other units, shall be made necessary because of the act or omission of an owner, his/her family, renter(s) , invitees and guests, the expenses incurred by the Association shall be a liability of and an assessment against the owner.

**6.1.3. DAMAGE** - All incidental damage caused to a unit by work done or ordered by the Association exclusive of unavoidable damage to surface

treatments or decorations, shall be promptly repaired by and at the expense of the Association.

**6.2. BY THE OWNER** - The responsibility of the owner shall be as follows:

**6.2.1. SPECIFIC ITEMS** - To maintain, repair and replace at the owner's expense, all portions of the unit except the portions to be maintained, repaired and replaced by the Association. The owner's responsibility specifically includes, but is not limited to, windows and glass panels, hurricane shutters, (doors except exterior surface paint or stain), screens, frames, hardware, appliances, fixtures, switches, compressors, air handlers, air conditioner refrigerant lines and drains, wiring, piping, ductwork and plumbing within the particular unit.

**6.2.2. EXTERIOR APPEARANCE** - A owner shall not paint or otherwise decorate or change the appearance of any portion of the building not within the interior walls of the unit or which is visible from the exterior of the unit, unless the written consent of the board is obtained in advance. (This shall not be construed to require approval for placing appropriate furniture on terraces, patios or balconies, but does include blinds or shutters on terraces, patios or balconies including but not limited to hurricane shutters of all types).

**6.2.3. OWNER ALTERATION OF COMMON OR LIMITED COMMON AREAS RESTRICTED** - No owner shall make any alterations in the portions of the Common Areas or Limited Common Areas or remove any portion thereof or make any additions thereto without the prior written approval of the board. The board shall have the authority to approve the proposed work, disapprove the work or to require modifications to the work and the board's decision shall be determinative of the matter. All applicable government agencies must approve and grant permits and the entire expense including subsequent maintenance and restoration must be borne by such owner. The Association may require approval from engineers or other professionals. No owner shall do any work which would jeopardize the safety or soundness of the building or impair any easements. Exterior radio and television antennas including satellite dishes are prohibited. Such board approved work is declared not to constitute material alterations or substantial additions to the Areas.

## **7. COMMON AREAS**

**7.1. COMMON AREAS** - The Common Areas in the Condominium shall be owned by the owners in undivided shares as follows: 1/21st part of the whole per unit.

**7.2. NO PARTITION** - No action for partition of the Common Areas shall be allowed unless otherwise provided herein.

**7.3. USE** - Each owner and the Association shall be entitled to use the Common Areas in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of other owners.

**7.4. MATERIAL ALTERATIONS AND ADDITIONS** - With the written consent of 75% of unit owners, the board may materially alter, add to, relocate or improve Common Areas or Condominium Property. Provided, if any Limited Common Areas are materially affected, the written consent of the owners of the units to which the Limited Common Areas are assigned must be obtained by the board. This power includes the purchase, acquisition, sale, conveyance or mortgaging of such property.

**8. FISCAL MANAGEMENT** - The fiscal management of the Condominium including budget, fiscal year, charges, assessments, and collection of assessments shall be as set forth herein and in the Bylaws .

**9. ADMINISTRATION** - The administration of the Condominium shall be by the board and its powers and duties shall be as set forth herein and in the Bylaws.

**10. INSURANCE** - In order to adequately protect the owners, the Association, the Condominium Property required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

**10.1. DUTY AND AUTHORITY TO OBTAIN** - The board shall use its best efforts to obtain and maintain adequate insurance. In all insurance purchased by the Association, the name of the insured shall be the Association and the owners and their mortgagees (without naming them), as their interests shall appear and shall provide for the issuance of certificates of insurance and mortgagee endorsements to any or all of the holders of institutional first mortgages.

**10.2. BASIC INSURANCE** - Insurance covering the buildings and improvements as well as all Condominium Property, in an amount determined annually by the board. Pursuant to F. S. 718.111(11 )(b) the word "building" does not include floor coverings, wall coverings, ceiling coverings nor electrical fixtures, appliances, air conditioning or heating equipment, water heaters or built-in cabinets located within a unit. Such insurance shall afford the following protection:

**10.2.1. PROPERTY** - Replacement cost coverage for loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by an "All Risks" property contract.

**10.2.2. FLOOD** - Up to the replacement cost for each building and insurable improvements as available. If not available, owners will be notified promptly and in writing.

**10.2.3. LIABILITY** - Premises and operations liability

endorsements for personal injury and property damage in such limits of protection and with such coverage as required by the board, with cross liability endorsements to cover liabilities of the owners as a group to a owner.

**10.2.4. AUTOMOBILE** - Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles in such limits of protection and with such coverage as may be required by the board.

**10.2.5. WORKERS' COMPENSATION** - Regardless of the number of employees, the Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.

**10.2.6. DIRECTORS AND OFFICERS LIABILITY INSURANCE** - The Association shall obtain and maintain Directors and Officers liability insurance in an amount determined by the board utilizing the broad form of policy coverage for all Directors and Officers, and past Directors and Officers.

**10.2.7. OPTIONAL COVERAGE** - The Association may purchase and carry such other insurance coverage as the board may determine be in the best interests of the Association and owners.

**10.3. DESCRIPTION OF COVERAGE** - A summary of the coverage included in the master policies shall be mailed to the board annually.

**10.4. WAIVER OF SUBROGATION** - If available and where applicable, the board shall endeavor to obtain insurance policies which provide that the insurer waives its rights to subrogation as to any claim against owners, the Association, or their respective servants, agents or guests .

**10.5. SHARES OF INSURANCE PROCEEDS** - All proceeds of insurance policies purchased by the Association shall be payable to the Association. The duty of the Association shall be to receive such proceeds and hold and disburse them for the purposes stated herein in the following shares:

**10.5.1. COMMON AREAS** - Proceeds on account of damage to Common Areas shall be held in as many undivided shares as there are units, the shares of each owner being the same as his/her share in the Common Areas.

**10.5.2. UNITS** - Proceeds on account of damage to units shall be held in as many undivided shares as there are damaged units, the share of each owner being in proportion to the cost of restoring the damage suffered by each such unit.

**10.5.3. MORTGAGEES** - If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units except to the



extent that insurance proceeds exceed the actual costs of repair or restoration of the damaged improvements, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The Association shall pay all policy deductible amounts.

**10.6. DISTRIBUTION OF INSURANCE PROCEEDS** - Proceeds of insurance policies received by the Association shall be distributed for the benefit of the owners in the following manner:

**10.6.1. COST OF RECONSTRUCTION OR REPAIR** - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall be paid to defray the costs. Any proceeds remaining after defraying costs shall be distributed to the Association, for the account of the Association.

**10.6.2. FAILURE TO RECONSTRUCT OR REPAIR** - If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds after expenses shall be distributed to the beneficial owners, remittances to owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

**10.7. ASSOCIATION AS AGENT** - The Association is hereby irrevocably appointed agent for each owner to adjust all claims arising under insurance policies purchased by the Association.

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

**11.1. DAMAGE TO UNITS** - Where loss or damage is only to those parts of a unit for which the responsibility of maintenance and repair is that of the owner, any Association insurance proceeds on account of the damage, less the deductible, shall be distributed to such contractors, suppliers and personnel for work done, materials supplied or services required for reconstruction or repair. Payments shall be in such amounts and at such times as the owners may direct. The owners of damaged units shall be responsible for reconstruction and repair and shall bear the cost thereof, if any, in excess of the insurance proceeds.

**11.2. DAMAGE TO COMMON AREAS - LESS THAN "VERY SUBSTANTIAL"** Where loss or damage occurs to the Common Areas, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss, and the following procedures shall apply:

**11.2.1. ESTIMATES** - The board of the Association shall

promptly obtain not less than three reliable and detailed estimates of the cost of reconstruction and repair, and shall negotiate and contract for the work.

**11.2.2. INSURANCE INSUFFICIENT** - If the net proceeds of insurance plus available reserves are insufficient to pay for the cost of reconstruction and repair of the Common Areas, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all owners. Such special assessments need not be approved by the owners. The special assessments shall be added to the proceeds available for reconstruction and repair of the property.

**11.2.3. "VERY SUBSTANTIAL" DAMAGE** - As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby seventy five (75) percent or more of the total units are rendered uninhabitable. Should such damage occur, then:

**11.2.3.1. OWNERS' MEETING** - A meeting of the Association shall be called by the board as soon as possible after the casualty. The purpose of the meeting shall be to determine the wishes of the owners with reference to reconstruction or termination of the Condominium, subject to the following:

**11.2.3.1.(a). INSURANCE SUFFICIENT** - If the insurance proceeds and reserves available for reconstruction and repair are sufficient to cover the cost, then the property shall be reconstructed or repaired unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of units, in which case the Condominium shall be terminated pursuant to Paragraph 16.2.

**11.2.3.1.(b). INSURANCE INSUFFICIENT** - If the insurance proceeds and reserves available for reconstruction and repair are not sufficient to cover the cost so that a special assessment will be required, unless a majority of the owners vote in favor of such special assessment, the Condominium shall be terminated pursuant to Paragraph 16.2. If a majority of the owners approve the special assessment, the Association, through its board, shall levy such assessment and shall proceed to negotiate and contract for such reconstruction and repairs. The special assessment shall be added to the proceeds of insurance and reserves available for reconstruction and repair of the property.

**11.2.4. DISAGREEMENT** - If any disagreement shall arise as to whether "very substantial" damage has occurred, a determination by a majority of the board shall be binding upon all owners.

**11.3. APPLICATION OF INSURANCE PROCEEDS** - It shall be presumed that the first monies disbursed for reconstruction and repair shall be from the

insurance proceeds and they shall first be applied to reconstruction of the units and then to the Common Areas and then to the Limited Common Areas. If there is a balance in the funds held by the Association after the payment of all costs of reconstruction and repair, such balance shall be distributed to the Association for the account of the Association. Provided, however, if special assessments were made pursuant to Paragraph 11. 2.3.1.(b) then all or a part of such balance shall be returned to the owners paying said assessments up to the full amount each paid, then to the Association. If there are insufficient funds to return the full amount, then the balance shall be returned pro-rata.

**11.4. EQUITABLE RELIEF** - In the event of substantial damage to the condominium property, and if the property is not reconstructed or repaired within a reasonable period of time, any owner may petition a court for equitable relief, which may include a termination of the condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that reconstruction or repair has occurred within a reasonable period of time if substantial work is commenced within such time following the damage or destruction as is determined by the board to be reasonable and the work proceeds without intentional and unwarranted delay to completion.

**11.5. PLANS AND SPECIFICATIONS** - Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the board and by a majority of the owners of the Association..

**12. USE RESTRICTIONS** - The use of the property of the Condominium shall be in accordance with the Documents, Rules and the following provisions:

**12.1. LAWFUL USE** - All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair upon Condominium property shall be the same as the responsibility for the repair and maintenance of the property as expressed earlier in this Declaration.

**12.2. RULES** - The Rules concerning the use of the Condominium property, including the units, may be enacted or amended by the board, provided however, that the board must solicit owner comments prior to adopting the Rule or Rule Amendments.

**12.2 (a)** A Rule or Rule Amendment enacted by the board may be amended or cancelled by a majority vote at a meeting of the owners at which a quorum is present,

**12.2 (b)** Upon adoption, copies of the Rules and/or Rule Amendments shall be furnished by the Association to all owners

within 15 days after adoption.

**12.2 (c)** No new or amended Rule may be enforced prior to distribution to the owners.

**12.3. USE OF THE UNITS** is restricted to single family residential and vacation rental purposes only. These use restrictions shall not be construed in such a manner as to prohibit an owner from maintaining a personal professional library, keeping personal business or professional records or accounts or handling personal, business or professional telephone calls or correspondence in and from the unit. Such uses are expressly declared customarily incident to the principal residential use.

**12.4. ASSOCIATION'S ACCESS TO UNITS** – The Association has an irrevocable right of access to the units during reasonable hours when necessary for the purpose of maintenance, repair and replacement of the Common Areas or of any portion of a unit to be maintained by the Association pursuant to this Declaration or for making emergency repairs which are necessary to prevent damage to the Common Areas or to another unit or units. The Association's right of access to a unit shall be exercised after reasonable notice to the owner, unless such notice is not possible or practical under the circumstances, and with due respect for the occupants' rights to privacy and freedom from unreasonable annoyance, as well as with reasonable precautions to protect the personal property within the unit. The Association shall retain a pass-key to all units. No owner shall alter any lock, nor install a new lock, the effect of which would be to prevent access by the Association when the unit is unoccupied, unless the owner provides the Association with a key.

**12.5. PARKING** - Each owner shall have the privilege of using unassigned parking areas on a first come basis. Parking restrictions are set forth in the Rules.

**12.6. PETS - RENTERS AND GUESTS** - Owner's pets may be regulated in the Rules. Renters and guests are not permitted to have pets.

**12.7. NUISANCES PROHIBITED** - Owners, renters, guests and invitees shall not engage in any practice, exhibit any behavior nor permit any condition to exist that shall, in the exclusive judgment of the board or its designee, to constitute a nuisance.

**13. CONVEYANCE, DISPOSITION, FINANCING** – The purpose and object of this Section is to maintain a quiet, tranquil and single family oriented atmosphere with the residents living in compatible coexistence with other financially responsible persons who are of like mind and acceptable both in character and comportment. This objective is considered to be both important and justified because of the necessity of sharing facilities and because of the large financial investment of each owner. Therefore, the conveyance,

disposal and financing of the units by any owner (subject to the exceptions provided in Section 17.1) shall be subject to the following provisions:

**13.1. ASSOCIATION APPROVAL REQUIRED FOR TRANSFER OF A UNIT** – No owner may sell, give or dispose of a unit or any interest therein in any manner without the written approval of the Association.

**13.2. MORTGAGE APPROVAL** - No owner may mortgage or finance a unit in any manner without the written approval of the Association except to an Institutional Mortgagee provided that an owner who sells a unit needs no approval to take back a purchase money mortgage.

**13.3. APPROVAL PROCEDURE** - The approval of the Association shall be obtained as follows:

**13.3.1. WRITTEN NOTICE** – Thirty days prior written notice shall be given the Association by the owner of an intention to sell, transfer in any fashion or encumber an interest. The board will immediately notify all owners of a proposed sale of a unit and who to contact if they are interested in purchasing said unit. The Association may require such other and further information as it deems reasonably necessary. The Association shall not approve any sale, or transfer until such time as all unpaid assessments, late charges and all court costs and attorneys fees (if any) incurred by the Association and due and owing for the unit have been paid.

**13.3.2. SALE** - The Association must, within 15 days after receipt of all the information required above, either approve or disapprove the transaction. In the case of disapproval, and upon the written demand of the owner, the Association must furnish an alternate purchaser or the Association may elect to purchase, and the owner must sell to such alternate purchaser or to the Association upon the same terms as the original terms of sale or transfer. If the terms are not the same, or better, the owner may withdraw the proposed sale. In exercising its power of disapproval the Association must act reasonably and in a fair and non-discriminatory manner and withhold approval only for reasons rationally related to the protection, preservation and proper operation of the Condominium and the purposes as set forth in Section 13.

**13.3.2 (a)** If the Association fails or refuses within the allotted time to notify the owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or elect to purchase the unit, then the Association shall conclusively be presumed to have approved the transaction. The Association shall, upon demand, provide a letter setting forth the approval or a recordable Certificate of Approval.

**13.3.3. CLOSING DATE** - The sale shall be closed within 60 days

after an alternate purchaser has been furnished or the Association has elected to purchase.

**13.3.4. NOTICE OF DISAPPROVAL** - If the Association disapproves the proposed transaction (subject to the qualifications contained in Paragraph 13.3.2. regarding a sale) notice of disapproval shall be promptly sent in writing to the owner or interest holder, and the transaction shall not be closed.

#### **13.3.5. RENTAL OF UNITS**

(a) Only entire units may be rented. Cabanas may not be rented.

(b) All rental agreements must, or shall be deemed to contain the following: the agreement of the renter to abide by all of the of the condominium documents; that a violation of the documents is a breach of the rental agreement and grounds for damages, termination and eviction; that the renter and the owner agree that the Association may proceed directly against such renter and that the renter shall be responsible for the Association's costs and expenses, including attorney's fees. If such costs and expenses are not immediately paid by the renter, the owner shall pay them and said costs and fees shall be assessed against the owner.

(c) Each owner, by acceptance of the deed to a unit, appoints the Association as owner's agent to bring actions in the owner's name and at owner's expense including injunction, damages, termination and eviction.

(d) Rules must be provided to renters by or on behalf of the owner before the commencement of the rental term.

**13.4. NOTICE OF SUIT** - An owner shall give written notice to the Association of every suit or other proceedings which may affect the title to the unit, such notice to be given immediately after the owner receives knowledge thereof.

**13.5. JUDICIAL SALES** - are exempt from this Section.

**13.6. UNAPPROVED TRANSACTIONS** - Any transaction which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

**14. COMPLIANCE AND DEFAULT** - Each owner, guest, renter or invitee shall be governed by, and shall comply with the provisions of the Florida Condominium Act, this Declaration, including its exhibits, the Articles of Incorporation, the Association Bylaws and the Rules.

**14.1. REMEDIES** - Failure to comply shall be grounds for relief, which may include, but not limited to, an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any owner.

**14.2. COSTS AND FEES** - In any such proceeding, including appeals, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney fees.

**14.3. OWNER COMPLAINTS - DISPUTES** - In the event of a complaint by an owner against the Association, the board, or another owner and prior to the institution of any proceedings the owner, shall, by Certified Mail to the President of the board, provide complete details of the complaint. The board shall respond in writing to the owner within 20 days of the receipt of the complaint which shall either be a substantive response, or notify the complainant that a legal opinion has been requested or that advice has been requested from the Bureau of Condominiums. If the board requests advice from the Bureau of Condominiums, the board shall, within 10 days of receipt of the advice, provide in writing a substantive response to the complainant. If a legal opinion is requested, the board shall, within 10 days of the receipt of the opinion, provide in writing a substantive response to the complainant. The failure to act as set forth precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceedings, or arbitration arising out of the complaint. If unresolved, a dispute as defined in F.S. 718.1255(1) must be arbitrated in mandatory non-binding arbitration proceedings prior to commencing litigation.

**14.4. NO WAIVER OF RIGHTS** - The failure of the Association or any owner to enforce any covenant, restriction or other provision of the Condominium Documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other occurrences.

**15. AMENDMENTS** - Amendments to the Declaration, the Bylaws and the Articles of Incorporation shall be in accordance with the following:

**15.1. REQUIREMENTS** - An Amendment may be proposed either by the board or by twenty five percent (25%) of the owners, and may be considered at any regular or special meeting of the owners, provided proper notice has been given. The notice must include the full text of the proposed amendment.

**15.1 (a)** Passage of the amendment shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association stating that it has been enacted by the affirmative vote of the required percentage of the owners. The certificate shall include the recording data identifying the location of the Declaration as originally recorded.

**15.1.(b)** The amendment shall become effective when recorded in the public records and has been distributed to all owners.

**15.2. REQUIREMENT FOR PASSAGE** Amendments must be enacted by a simple majority of the owners present or by proxy.

**15.3. CORRECTORY AMENDMENT** - Whenever it shall appear that there is a defect, error or omission in any of the Condominium Documents or in order to comply with applicable laws or requirements of government agencies, the correctory amendment may be adopted by the board. The board shall, within 30 days, notify all owners of the wording of the correctory amendment.

**15.4. WRITTEN AGREEMENTS** - Any approval of owners on any matter called for by this Declaration, its Exhibits or any statute (with the exception of board elections) to be taken at a meeting of owners is hereby expressly allowed to be taken instead by written agreement without a meeting subject to F.S. 718.112(2)(d)(4). The agreement shall be in the form of a ballot and shall exactly state the agreement.

**16. TERMINATION** - The Condominium may be terminated in the following manner:

**16.1. AGREEMENT** - The Condominium may be terminated at any time by approval, in writing, of ninety percent (90%) of the owners of the Condominium and the approval of the holders of institutional first mortgages of record who have requested notification.

**16.2. "VERY SUBSTANTIAL DAMAGE"** - If a Condominium, as a result of casualty, suffers "very substantial damage" and it is decided that it will not be reconstructed or repaired, the Condominium form of ownership will thereby terminate without agreement.

**16.3. GENERAL PROVISIONS** - Upon termination, the former owners shall become the owners, as tenants in common, of all Condominium Property and of the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the Common Areas. The mortgagee or lienor of a owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of a Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts effecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Lee County, Florida.

**16.4. NEW CONDOMINIUM** - The termination of a Condominium does



not bar creation of another Condominium affecting all or any portion of the same property.

**16.5. PARTITION; SALE** - Following termination, the Condominium Property may be partitioned and sold upon the application of any owner. Provided, however, that if following a termination, two-thirds (2/3rds) of the owners vote to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

**16.6. BOARD AUTHORITY** - If the Condominium is terminated, the board shall wind up the affairs of the Condominium.

**16.7. PROVISIONS SURVIVE TERMINATION** - The provisions of this Paragraph 16 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by this paragraph have been completed.

## **17. RIGHTS OF MORTGAGEES**

**17.1. EXCUSAL FROM APPROVAL TO OWN** - The holder of an institutional first mortgage which obtains title to a unit through foreclosure or deed in lieu of foreclosure is not required to obtain the prior approval of the Association to own the unit.

**17.2. RIGHTS TO INFORMATION** - Upon receipt by the Association from any institutional mortgagee, Guarantor or Insurer of a copy of the mortgage held by such mortgagee, Guarantor or Insurer on a unit, together with a written request from such mortgagee or an Insurer or Guarantor of such mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such mortgagee, Insurer or Guarantor the following, and for which the Association may charge:

**17.2.1. FINANCIAL STATEMENT** - A copy of a financial statement of the Association for the immediately preceding fiscal year.

**17.2.2. INSURANCE CANCELLATION** - Written notice of the cancellation or termination by the Association of any policies of insurance covering the Common Areas or any improvements thereon, or any fidelity bonds of the Association.

**17.2.3. DAMAGE TO CONDOMINIUM** - Written notice of substantial damage or destruction to the improvements located on a Condominium's Common Areas which affects a material portion of the project or the unit securing its mortgage.

**17.2.4. EMINENT DOMAIN** - Written notice of condemnation or eminent domain proceeding affecting a material portion of the project or the unit securing

its mortgage.

**17.2.5. DELINQUENT ASSESSMENTS** - Written notice of failure by an owner owning a unit encumbered by a first mortgage held by such institutional mortgagee, Guarantor or Insurer to pay any Assessments where such failure or delinquency has continued for a period of sixty (60) days.

**17.2.6. FAILURE TO NOTIFY** - The failure of the Association to send any such notice to any such mortgagee, Guarantor or Insurer shall have no effect on any meeting, act or thing which was to have been the subject of such notice nor affect the validity thereof

**18. ENFORCEMENT OF ASSESSMENT LIENS** - Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property and the Association may also bring an action to recover a money judgment. After a judgment of foreclosure has been entered the owner during his/her occupancy, if so ordered by the Court, shall be required to pay a reasonable rental. If the unit is rented during the pendency of a foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent. The Association shall have all the powers provided in F.S. 718.116 and shall be entitled to collect interest at the highest lawful rate on unpaid assessments and reasonable attorneys fees, including appeals, and costs incident to the collection of such assessment or enforcement of such lien, with or without suit.

**18.1. CREATION AND ENFORCEMENT OF CHARGES** -The Association shall have a cause of action against owners to secure payment to the Association by owners of all charges, costs and expenses to the Association which cannot be secured as assessments, regular or special, under F. S. 718.116. The charge shall bear interest at the highest lawful rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

**19. COMMON EXPENSES AND COMMON SURPLUS** - Each owner's share shall be 1/21<sup>st</sup> part of the whole.

**20. CONDEMNATION:**

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

**20.2. DETERMINATION WHETHER TO CONTINUE THE CONDOMINIUM** - Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

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

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

**20.5. UNITS REDUCED BUT TENANTABLE** - If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**20.5.1. RESTORATION OF UNIT** - The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

**20.5.2. DISTRIBUTION OF SURPLUS** - The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

**20.6. UNIT MADE UNTENANTABLE** - If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

**20.6.1. PAYMENT OF AWARD** - The fair market value of the unit immediately prior to the taking, as determined by agreement between the owner and the Association or by arbitration in accordance with Section 21.6.4. following, 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 the mortgagee(s).

**20.6.2. ADDITION TO COMMON AREAS** - If possible and

practical, the remaining portion of the unit shall become a part of the Common Areas and shall be placed in condition for use by all owners in the manner approved by the board.

#### **20.6.3. ADJUSTMENT OF SHARES IN COMMON**

**ELEMENTS** - The shares in the Common Areas appurtenant to the units that continue as part of a Condominium shall be adjusted to distribute the ownership of the Common Areas in equal shares among the reduced number of owners. This shall be done by restating the shares of continuing owners in the Common Areas as fractions of the reduced total.

**20.6.4. ARBITRATION** - If the fair market value of a unit prior to the taking cannot be determined by agreement between the owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I. appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisals shall be paid by the party selecting the appraiser.

**21. TAKING OF COMMON AREAS** - Awards for the taking of Common Areas shall be used to make the remaining portion of the Common Areas usable in the manner approved by the board. The balance of such awards, if any, shall be distributed to the owners in the shares in which they own the Common Areas 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.

**22. AMENDMENT OF DECLARATION DUE TO CONDEMNATION** - The changes in units, in the Common Areas and in the ownership of the Common Areas that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by the majority of all Directors of the Association, without the consent of any owner or mortgagee being required for any such amendment.

**23. VOTING** - Each unit shall have one full indivisible vote in all matters .

**24. TIME SHARE PROHIBITED** - No time share estates may be created in this Condominium.

**25. SEVERABILITY AND NON-WAIVER** - If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby. The failure of

the Association in any instance to enforce any covenant or provision of this Declaration or any of the Condominium Documents shall not constitute a waiver of its right to do so thereafter in other instances.

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM was adopted by the Association Membership this Thirty First day of December, 2000.

**WITNESS**

(Sign) Warren F. Kimball, Jr.  
(Print) WARREN F. KIMBALL, JR.

Captiva Shores Condominium  
Association, Inc.

(Sign) John L. Pilon  
(Print) JOHN L. PILON

BY Paul Valentino  
Paul Valentino, President

**STATE OF FLORIDA**

**COUNTY OF LEE**

The foregoing instrument was acknowledged before me this 11 day of January, 2001 by Paul Valentino, as President of **CAPTIVA SHORES CONDOMINIUM ASSOCIATION, INC.**, a Florida non-profit corporation, on behalf of said corporation. He is personally known to me or has produced appropriate identification.

Notary Public:



**JOAN B. STOKES**  
COMMISSION # CC 654276  
EXPIRES JUN 9, 2001  
BONDED THRU  
ATLANTIC BONDING CO., INC.

(Sign) Joan B. Stokes

(Print) Joan B. Stokes

SEAL

State of Florida

My Commission Expires: 6/9/01

DR BK 03350 PG 4574

**EXHIBIT A TO THE AMENDED AND RESTATED DECLARATION**

**AMENDED AND RESTATED BYLAWS**  
**OF THE**  
**CAPTIVA SHORES CONDOMINIUM ASSOCIATION, INC.**

(THESE BYLAWS SUPERCEDE ALL PREVIOUS BYLAWS)

**1. IDENTITY** - These are the Amended and Restated Bylaws of the Captiva Shores Condominium Association, Inc., a nonprofit Florida Corporation formed for the purpose of administering the Captiva Shores Condominium Association, Inc., located at Captiva Island, Lee County, Florida, commonly known as Captiva Shores, upon the lands described in the Declaration of Condominium. (The corporation shall hereafter be referred to as the "Association") The definitions in the Declaration of Condominium shall have the same meaning in these Bylaws unless the context otherwise requires.

**1.1.OFFICE** - The office of the Association shall be at Captiva Island or such other location within Lee County as may be determined by the board .

**1.2. FISCAL YEAR** - The fiscal year of the Association shall be the calendar year.

**1.3. SEAL** - The seal of the Association shall bear the abbreviated name of the Association, the word "Florida," and the year of incorporation, 1981.

**2. UNIT OWNER MEETINGS**

**2.1. ANNUAL MEETINGS** - The Annual Unit Owner Meeting shall be held on the second Monday of November of each year and at such time, and convenient location as may be determined by the board.

**2.2. SPECIAL UNIT OWNER MEETINGS AND BOARD RECALLS** Special Owners Meetings shall be held whenever called by the President, Vice President or a majority of the board or when requested by written notice from 25% of the Association's owners. Unit Owner Meetings to recall a member or members of the board may be called by 10% of the Association's owners.

**2.3. NOTICE OF UNIT OWNER MEETINGS** - Notice of Owners Meetings, including the Annual Meeting, must include a complete agenda. The notice shall be mailed to each unit owner by United States mail at the last known address, unless waived by the owner in writing, at least 60 days prior to the meeting, . The Secretary of

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the board or other person giving notice of the meeting shall execute a Certificate of mailing which shall be placed in the official records of the Association as proof of such mailing. Written notice of the meeting, with agenda, shall also be posted in a conspicuous place on the condominium property at least 60 continuous days prior to the annual meeting.

#### **2.4. BOARD ELECTIONS, MEETINGS - NOTICE AND**

**PROCEDURE** - The regular election of the board shall occur at the annual meeting .

##### **2.4.1 Time periods:**

(a) Not less than 60 days before a scheduled election, the Association shall mail to each unit owner the first notice of the date of the election.

(b) Any unit owner desiring to be a candidate for the board must give written notice of intent to run to the Association not less than 40 days before the election date. With that notice, the candidate may request the Association to include a statement by the candidate as to why he/she should be elected. The costs of copying and mailing the statement shall be borne by the Association. The Association shall not edit, alter, or otherwise modify the content of the statement and shall have no liability for nor endorse its contents.

(c) Not less than 30 days prior to the election the Association shall mail a second notice of the election to all owners, together with a written ballot which shall list all candidates and include any statement provided by the candidates.

**2.4.2.** There is no quorum requirement for a board election; however at least 50 percent of the owners must cast a ballot to have a valid election and elections shall be decided by a majority of those votes cast. Proxy voting is not allowed for board elections.

**2.4.3.** An election is not required unless more candidates file notices of intent to run than vacancies exist on the board.

**2.5. QUORUM** - A quorum at Owners Meetings shall consist of a majority of the owners. Decisions made by a majority of the owners represented at a meeting at which a quorum is present in person or by proxy shall be binding and sufficient for all purposes except where a larger percentage is required by F.S. 718 or these Condominium Documents.

**2.6. OWNER PARTICIPATION** - Owners shall have the right to participate in meetings of owners with reference to all designated agenda items, however, at the opening of the meeting, the Chair of the meeting may adopt reasonable rules

governing the frequency, duration and manner of unit owner participation. Any unit owner may tape record or videotape a meeting of the owners.

**2.7. INDIVISIBLE VOTE** - Each unit shall have one indivisible vote. If multiple owners of a unit cannot agree on a vote, the vote shall not be counted.

**2.8. PROXIES** - Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated and shall be valid only for the particular meeting designated or an adjournment thereof, , and must be filed with the Secretary of the board before or immediately preceding the meeting. A photographic, photo static or equivalent reproduction of a proxy is a sufficient proxy pursuant to F.S. 607.0722. Both limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or Bylaws; and for any other matter which F.S. 718 requires or permits a vote of the owners.

**2.9. NO QUORUM** - If any meeting of the owners cannot be organized because a quorum is not present, the owners who are present, either in person or by proxy, may adjourn the meeting until a quorum is present.

**2.10. ORDER OF BUSINESS** - The order of business at the Annual Owner Meeting and, as far as applicable at all other unit owner meetings, shall include but not be limited to:

- (a) Election of a Chairman of the meeting, unless the President or Vice President of the Association is present, in which case then he/she shall preside.
- (b) Collection of ballots.
- (c) Checking of signatures and unit identifications on ballots against eligible voter lists.
- (d) Calling of the roll and certifying of proxies.
- (e) Reading and disposal of any unapproved minutes.
- (f) Reports of Directors.
- (g) Reports of Committees.
- (h) Announcement of the results of the election of Directors.
- (i) Owner agenda items, if any.
- (j) Unfinished business.



(k) New business.

(l) Adjournment.

### **3. BOARD OF DIRECTORS**

**3.1. NUMBER, TERM, QUALIFICATIONS AND VACANCIES** - The affairs of the Corporation shall be governed by a board of five persons. In the event of temporary vacancies, the board shall retain the power to act as bestowed in these Documents. All Directors shall be owners or spouses of owners. Any officer of a corporation, trust, partnership or other owner shall be deemed to be an owner for the purpose of board membership. Directors shall be elected by the owners on the date of the Annual Meeting for two year staggered terms to continue the arrangement whereby three of the Directors are elected one year and two of the Directors are elected the next year. In the event of a vacancy due to resignation or death, a majority of the board shall appoint, within 30 days, a replacement to serve until the next regularly scheduled election.

**3.2. TERM OF SERVICE** - The term of each Director's service, except in the case of a vacancy caused by recall, shall extend until their elected term is completed and thereafter until their successor is duly elected or until the Director is recalled in the manner provided in the Condominium Act by a majority of the owners. A seat held by a Director who places his/her unit for sale shall automatically become vacant.

**3.3. ORGANIZATIONAL BOARD MEETING** - The Organizational Meeting of each newly elected board for the purpose of electing officers and conducting other business shall be held at such place and time as shall be fixed by the Directors, provided a quorum is present. Unless a prior notice states otherwise noticed, the Organizational Meeting shall be held immediately following the Annual Meeting. Election of officers may be by secret ballot.

**3.4. REGULAR BOARD MEETINGS** - Regular meetings of the board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director personally or by mail, telephone, fax or Email at least fourteen days prior to the meeting. Notice to owners must be given in accordance with Section 3.6. Emergency board meetings may be called by three or more Directors. (See section 3.6(d)).

**3.5. WAIVER OF NOTICE** - Any Director may waive notice of a meeting before, at or after the meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at a meeting shall constitute waiver of notice of the meeting.

**3.6. NOTICE TO OWNERS -- REGULAR AND EMERGENCY MEETINGS** - Notices of Directors regular meetings shall be in writing and sent to the

owners by the board Secretary not less than fourteen days prior to the meeting. The Secretary shall execute and file as part of the official Association documents a certificate that states the notice was mailed to all owners of record at their last known address.

- (a). The notice shall indicate the place and time of the meeting.
- (b). If the meeting is by telephonic or other electronic means, the notice shall incorporate the procedure by which owners may listen and participate.
- (c). The notice shall specifically list every agenda item. An item not on the agenda may be taken up on an emergency basis upon the affirmative vote of a majority plus one of the Directors. Such emergency action shall be noticed and ratified at the next regular meeting of the board in accordance with FS 718. 112 (b) 5 (c).
- (d). Time permitting, notices for emergency meetings of the board must be sent to owners not less than three working days prior to the meeting. The board must use discretion in designating any meeting as an emergency meeting and the minutes of said meeting must state, with particularity, the emergency that necessitated the meeting.
- (e). Notice of any board Meeting at which a special assessment is to be considered shall contain a statement that assessments will be considered and the nature and extent of such assessments.

**3.7. OWNER PARTICIPATION** - Meetings of the board shall be open to all owners. Board meetings are for the board to conduct the business of the Association. At the commencement of the meeting the President may announce ground rules governing the frequency, duration and manner of owner participation. Any owner has the right to request the President to place an issue on the agenda, provided that, such request is made prior to the agenda being sent to the owners. Owners shall have the right to tape record or videotape the meetings of the board.

**3.8. BOARD MEETINGS, QUORUM AND VOTING** – A quorum at Directors' Meetings shall consist of not less than three Directors. Motions and resolutions must be approved by three Directors. Directors may not vote by proxy or by secret ballot except for the election of officers which may be conducted by secret ballot. The vote of each board member shall be recorded in the minutes. If at any meeting of the board there is less than a quorum, the Director(s) present may adjourn the meeting until such time as a quorum is present. At the continuation of any adjourned meeting, (which must be properly noticed), any business which might have been transacted at the meeting as originally called may be transacted.

(a). Board Meetings may be conducted by telephonic or other electronic means provided that a procedure is adopted that allows all owners to participate.

(b) The Secretary of the board will record the meeting, transcribe the tape or notes and send a copy of the unapproved minutes to all owners not less than fourteen days after the meeting. The unapproved minutes must be presented to the board for approval at the next regular board meeting. Upon approval, the Secretary will place the minutes in the official record books of the Association and said books shall be available to any unit owner upon reasonable request.

(c) Routine resolutions – No meeting required. The board may consider and vote on routine written resolutions by mail or electronic means without a formal meeting, provided however, a copy of the resolution is sent to all Owners prior to board consideration and that the Owners be notified at the next board meeting as to whether the resolution passed. The Secretary will file the resolution and the vote as part of the official records.

**3.9. PRESIDING OFFICER** - The presiding officer at Directors' meetings shall be the President. In the absence of the President the Vice President shall preside.

**3.10. DIRECTOR COMPENSATION** - Directors shall serve without pay unless a majority of the owners annually authorize Director's fees. Directors shall be entitled to reimbursement for expenses reasonably incurred and approved by the Treasurer.

**4. POWERS AND DUTIES OF THE BOARD** - All of the powers and duties of the Association existing under the Florida Corporation Statutes, the Condominium Act, the Declaration of Condominium, the Articles of Incorporation and these Bylaws shall be exercised exclusively by the board, or its duly authorized agents, contractors, or employees subject only to the approval by owners when such is specifically required. Such powers and duties of the Directors shall include, but shall not be limited to, the following:

**4.1.** To prepare budgets and make and collect assessments and the monthly fees against owners to defray the costs of the Association.

**4.2.** To use the proceeds of assessments and monthly fees in the exercise of its powers and duties.

**4.3.** The maintenance, repair, replacement and operation of the Condominium Property.

**4.4.** To enact rules concerning the use of the Common Areas, Limited Common Areas and the Units, subject to the limitations contained in the Documents.

**4.5.** The reconstruction of the Common Areas or Association property after casualty and/or the further improvement of such property as set forth in the Documents.

**4.6.** To approve or disapprove proposed actions in the manner provided in the Documents. .

**4.7.** To enforce by legal means the provisions of applicable laws and the Condominium Documents.

**4.8.** To contract for management of the Condominium.

**4.9.** To carry insurance for the protection of the Association and the condominium.

**4.10.** To pay the cost of all utility and cable services rendered to the Condominium and not billed to the owners of individual units.

**4.11.** To employ personnel and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

**4.12.** To bring and defend suits, make and execute contracts, deeds, mortgages, leases and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property. To grant easements and licenses over the Association property necessary or desirable for proper operation of the condominium, subject to any limitations contained in the Documents.

**4.13.** To contract for products and services, provided, for any contract exceeding five percent of the total annual budget of the Association requires at least three competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Lee County. Such contract must be in writing and approved by a majority of the owners. This provision does not apply to contracts with employees of the Association, attorneys, accountants, architects, engineering, or the Association Manager. The Association need not accept the lowest bid.

**4.14.** The board may appoint committees to handle the day to day affairs of the Association or for any specific purpose. All committees and committee members shall serve at the pleasure of the board.

**4.15.** Spending. A board member may authorize any single expenditure for

non-budgeted items up to \$1000 provided there are two signatures on the check. Non budgeted items between \$1000 and \$10,000 require approval of a majority of the board. Non budgeted single expenditures over \$10,000 require approval of a majority of the Owners.

## **5. OFFICERS**

**5.1. EXECUTIVE OFFICERS and REMOVAL THEREOF** -The executive officers of the Association shall be the President, Vice President, Secretary and Treasurer, and such assistant officers as may be desired, all of whom shall be elected annually by and from the board and who may be peremptorily removed by a vote of three or more Directors at any board meeting. Any person may hold two or more offices except that the President shall not also be the Secretary.

**5.2. PRESIDENT - POWERS AND DUTIES** - The President shall be the chief executive officer of the Association and shall have all of the powers and duties which are usually vested in the office of President of a corporation.

**5.3. VICE PRESIDENT - POWERS AND DUTIES** – The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

**5.4. SECRETARY - POWERS AND DUTIES** – The Secretary shall keep the minutes of all proceedings of the Directors and the owners; shall attend to the giving and serving of all notices to the owners and Directors and other notices required by law; shall have custody of the seal of the Association and affix the same to instruments requiring a seal; shall keep and have custody of the records of the Association, except those of the Treasurer; and shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

**5.5. TREASURER - POWERS AND DUTIES** - The Treasurer approved by the board and under the supervision and responsible to the Treasurer, shall have custody of all property of the Association, including funds, securities and evidences of indebtedness; shall keep the assessment rolls and accounts of the owners; shall keep the books of the Association in accordance with good accounting practices; and shall perform all other duties incident to the office of the Treasurer of a corporation.

**5.6. EMPLOYEE COMPENSATION** - The compensation of all employees of the Association shall be fixed by the Directors.

**5.7. INDEMNIFICATION** - Every Director and every officer and committee member of the Association shall be indemnified by the Association against all

clams, settlements, expenses and liabilities, including attorney's fees through all trial and appellate levels, reasonably incurred by or imposed in connection with any proceeding, arbitration, or settlement to which such person may be a party, or in which they may become involved, by reason of being or having been a Director, officer, or committee member of the Association. Notwithstanding the foregoing, in the event of a voluntary settlement, the indemnification provisions herein shall not be automatic and shall apply only when the board approves such settlement. The foregoing right of indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which such Director, officer or committee member may be entitled by common law or statute.

**5.8. DELEGATION** - To the extent permitted by law, the powers and duties of the Directors and officers may be delegated for the purpose of management by the board.

**6. MINUTES AND INSPECTION OF RECORDS** - Minutes of all meetings of owners and of the board shall be kept in a businesslike manner and shall be reduced to written form within fourteen days and these, plus records of all receipts and expenditures and all other official records, shall be available for inspection by owners and board members upon reasonable request.

**7. FISCAL MANAGEMENT** shall be in accordance with the following provisions:

**7.1. BUDGET** - A proposed annual budget of common expenses and an administrative budget for the Association shall be prepared by the board and adopted by the owners at the Annual Meeting. It shall include all anticipated expenses for operation, maintenance and administration of the Condominium and for all of the unpaid operating expenses previously incurred. The budgets shall contain reserves per F.S. 718.1 12(2)(F)(2) which may later be waived. The waiver of reserves in a condominium budget shall be by a majority of the owners present and voting at a duly called meeting of the Association. Reserve funds and any accrued interest on the funds shall remain in the reserve accounts for authorized reserve expenditures only, unless their use for other purposes is approved in advance by a majority vote of the owners present at a duly called meeting of the Association. The budget must contain a reasonable allowance for contingencies and provide funds for all unpaid operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the board for the remaining portion of the fiscal year.

**7.2. MAILING** - A copy of the proposed annual budgets shall be mailed or delivered to the owners not less than 14 days prior to the meeting of the Directors at which the budgets will be adopted together with a notice of the meeting.

**7.3. ASSESSMENTS** - The shares of the owners of the Common Expenses may be made payable in installments. Payments are due on the day set by the board and shall become delinquent 10 days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of Common Expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed in the Public Records in Lee County, Florida and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

**7.4. SPECIAL ASSESSMENTS AND CHARGES** - Assessments and charges for expenses which are not provided for and funded in the Budgets shall be made by the board subject to approval of a majority of the owners and subject to any limitations stated elsewhere in the Documents. Owner approval may be secured in writing without the necessity of a Special Owners Meeting.

**7.5. ASSESSMENT ROLL** - The Assessments for Common Expenses and Charges shall be set forth upon a roll of the Units which shall be available for inspection at all reasonable times by owners. Such roll shall indicate for each unit the name and address of the owner, and the Assessments and charges paid and unpaid. A certificate made by a duly authorized representative of or by the board as to the status of a unit's account may be relied upon for all purposes by any person for whom made.

**7.6. LIABILITY FOR ASSESSMENTS AND CHARGES** - An owner regardless of how title has been acquired including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all Assessments and charges coming due while owner of a unit. Additionally an owner shall be jointly and severally liable with the previous owner for all unpaid Assessments and charges due and payable up to the time of transfer of title. Liability may not be avoided by waiver of the use or enjoyment of any Common Areas or Association property or by abandonment of the unit for which the Assessments are made. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of: (1) The unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or (2) One percent of the original mortgage debt. This partial excusal shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to, or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien

against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments. This paragraph shall be deemed amended so as to incorporate the provisions of F.S. 718.116.

**7.7. LIENS FOR ASSESSMENTS** - The unpaid portion of an Assessment, including an accelerated Assessment which is due, together with costs, interest and reasonable attorneys' fees for collection, shall be secured by a lien upon the unit and all appurtenances thereto when a notice claiming the lien has been recorded by the Association in accordance with the requirements of Florida Statute 718.116.

**7.8. UNPAID CHARGES** - Unpaid charges which are due together with costs, interest and reasonable attorney's fees including appeals for collection shall be the basis for an action at law by the Association against the unit owner.

**7.9. COLLECTION INTEREST; ADMINISTRATIVE LATE FEE; APPLICATION OF PAYMENTS** - Assessments or charges and special assessments paid on or before thirty days after the date due shall not bear interest, but all sums not paid on or before thirty days shall bear interest at the highest lawful rate from the date due until paid. In addition to such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each installment of the Assessment for which payment is late. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's fees and then to the Assessment payment first due. All interest collected shall be credited to the Common Expense account.

**7.10. COLLECTION – SUIT** - The Association, at its option, may enforce collection of delinquent Assessments by suit at law, by foreclosure of the lien securing the Assessments, or by any other remedy available under the laws of the State of Florida, and in any event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment or decree, together with those which have become due by acceleration plus interest thereon and all costs incident to the collection and the proceedings, including reasonable attorneys' fees, including appeals. The Association must deliver or mail by certified mail to the owner a written notice of its intention to foreclose the Assessment lien 30 days before commencing foreclosure, unless Notice of Contest of Lien has been filed. The lien created by F.S. 718.116(5)(a) shall secure only Assessments, interest, costs and attorneys fees and not fines, charges or other fees.

**7.11. ACCOUNTS** - All sums collected from assessments, special assessments or charges shall be credited to accounts from which shall be paid the expenses for which the respective Assessments or charges are made.

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**7.12. ASSOCIATION DEPOSITORY** - The depository of the Association shall be a bank or banks or state or federal savings and loan associations or a member firm of the New York Stock Exchange with offices in Florida as designated by the Directors. Withdrawal of moneys from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

**7.13. COMMINGLING OF FUNDS PROHIBITED** - All funds shall be maintained separately in the Association's name. Reserve, contingency, special assessment funds and operating funds may not be commingled. No manager or business entity required to be licensed or registered under F.S. 468.432, and no agent, employee, officer, or Director of the Association shall commingle any Association funds with personal funds or with the funds of any other condominium association or community association.

**7.14. FINANCIAL REPORTS** - A complete financial report of actual receipts and expenditures of the Association shall be made annually. A complete set of financial statements prepared in accordance with Generally Accepted Accounting Principles shall be furnished to each owner within 60 days after the end of the fiscal year.

**7.15. FIDELITY BONDING** - The Association shall obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks and the President, Secretary and Treasurer of the Association in an amount equal to 25 percent of the then current annual budget plus all reserve funds of the Association previously accumulated but in no event less than the minimum required by the Condominium Act. The Association shall bear the cost of bonding.

**8. PARLIAMENTARY PROCEDURE** - Parliamentary procedure, such as Robert's Rules of Order, shall govern the conduct of all Association proceedings when not in conflict with the Declaration, the Charter, or Bylaws.

**9. BYLAW AMENDMENTS** - Amendments to the Bylaws shall be accomplished as set forth in the Declaration of Condominium.

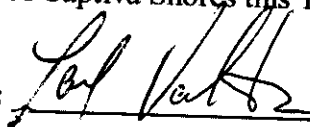
**10. MANDATORY ARBITRATION OF DISPUTES** - If unresolved, disputes between the board and any owner/s must be arbitrated in mandatory non-binding arbitration proceedings as provided in the Condominium Act prior to commencing litigation.

**11. ACKNOWLEDGEMENT AND APPROVAL OF SUBMERGED LAND LEASE** - The Association shall fully comply with and abide by the terms and conditions of that certain Sovereignty Submerged Land Lease Renewal numbered 360456985 between the Board of Trustees of the Internal Improvement Land Trust Fund of the State of Florida, as Lessor, and Captiva Shores Condominium Association, Incorporated, as

Lessee, which said Lease has been recorded at O.R. Book 2518, Page 2469, of the Lee County Pubic Records.

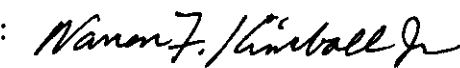
The foregoing were adopted as Exhibit A to the Amended and Restated Declaration of Condominium of Captiva Shores this Thirty First day of December 2000.

PRESIDENT:



Paul Valentino, President

Witness:



Warren F. Kimball Jr.

Witness:



John L. Pilon