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CERTIFICATE OF AMENDMENT
SECOND AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF POINTE SANTO DE SANIBEL CONDOMINIUM, A CONDOMINIUM
SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION AND BYLAWS
OF POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

THE UNDERSIGNED, being the duly elected and acting President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, does hereby certify that at a duly called meeting of the Board of Directors, where a quorum was present, all the resolutions set forth below were approved. Thereupon, at the Annual Meeting of the members held on January 25, 1997, where a quorum was present, after due notice, the resolutions were approved and adopted by the votes indicated for the purposes of amending the Declaration of Condominium of POINTE SANTO DE SANIBEL CONDOMINIUM, A CONDOMINIUM, as originally recorded at Official Record Book 1084, Page 2127, et seq., and the Amended and Restated Declaration of Condominium recorded in Official Record Book 1954, Page 3459, including any and all amendments thereto, Public Records of Lee County, Florida, and the Articles of Incorporation and Bylaws of the corporation.

1. The following resolution was approved by concurrence of at least two-thirds (2/3) of the voting interests of the members of the Association then present and voting at a duly called meeting in person or by proxy:

RESOLVED: That the Amended and Restated Declaration of Condominium of POINTE SANTO DE SANIBEL CONDOMINIUM, A CONDOMINIUM, be and is hereby amended, and the Second Amended and Restated Declaration of Condominium is adopted in the form attached hereto as Exhibit "A", and made a part hereof; and

2. The following resolutions were approved by at least a majority of the voting interests of the members of the Association then present and voting at a duly called meeting in person or by proxy:

RESOLVED: That the Amended and Restated Bylaws of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., be and are hereby amended, and the Second Amended and Restated Bylaws are adopted in the form attached hereto as Exhibit "D", and made a part hereof; and

3. The following resolutions were approved by at least a majority of the voting interests of the members of the Association then present and voting at a duly called meeting in person or by proxy:

RESOLVED: That the Amended and Restated Articles of Incorporation of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., be and are hereby amended and the Second Amended and Restated Articles of Incorporation are adopted in the form attached hereto as Exhibit "E", and made a part hereof; and it is further

RECORD VERIFIED - CHARLIE GREEN, CLERK •
BY: MARY JO ROBINSON, D.C. •

OR2822 PG0748

RESOLVED: That the officers and Directors are hereby instructed and authorized to execute the aforementioned documents and cause them to be filed of public record, together with a Certificate of Amendment as required by law.

Dated: April 18, 1997

Signed, sealed and delivered in the presence of:

Sherry Romisher
Witness:

Sherry Romisher
Print Name

Rose Mary Manduyano
Witness

Rose Mary Manduyano
Print Name

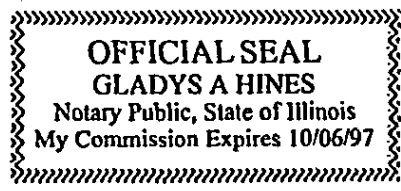
By: John S. McGuire
John S. McGuire, President

STATE OF Illinois)
COUNTY OF Lake) §:

The foregoing instrument was acknowledged before me this 18th day of April, 1997, by JOHN S. MCGUIRE, President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., on behalf of the Association. He is personally known to me or has produced _____ as identification.

Gladys A Hines
Notary Public
GLADYS A HINES
(Print Name)

My Commission Expires:



OR2822 PG0749

EXHIBITS TO DECLARATION

The following exhibits were recorded on April 30, 1975, together with the Declaration of Condominium of POINTE SANTO DE SANIBEL CONDOMINIUM, a Condominium, by Declaration created on the same date, at Official Record Book 1084, Page 2127, et seq., Public Records of Lee County, Florida. These exhibits, as previously amended to date, are hereby incorporated by reference as exhibits to the attached Second Amended and Restated Declaration of Condominium.

- EXHIBIT "A" - IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT
- EXHIBIT "B" - LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY, SURVEY OF CONDOMINIUM PROPERTY AND PLOT PLANS
- EXHIBIT "F" - DEVELOPER'S COMMITMENT TO PHASE DEVELOPMENT
- EXHIBIT "G" - OPERATING BUDGET FOR CONDOMINIUM ASSOCIATION AND SCHEDULE OF UNIT OWNERS' EXPENSES
- EXHIBIT "H" - FORM OF DEED

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

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



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This instrument prepared by:
Christopher N. Davies, Esquire
CHRISTOPHER N. DAVIES, P.A.
12601 World Plaza Lane, Suite 2
Fort Myers, FL 33907

NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING AMENDED AND RESTATED DECLARATION OF CONDOMINIUM.

SECOND AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF

POINTE SANTO DE SANIBEL CONDOMINIUM, A CONDOMINIUM

On April 30, 1975, the original Declaration of Condominium of Pointe Santo de Sanibel Condominium, a Condominium (hereinafter the "Condominium") was recorded in Official Record Book 1084, at Page 2127, et seq., of the Public Records of Lee County, Florida. The original Declaration of Condominium was subsequently amended and restated and the Amended and Restated Declaration of Condominium was recorded in the Public Records of Lee County, Florida on November 23, 1987, at Official Records Book 1954, Page 3459, et seq. That Amended and Restated Declaration of Condominium is hereby further amended in part and is restated in its entirety by this document known as the Second Amended and Restated Declaration of Condominium.

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Second Amended and Restated Declaration of Condominium is made by Pointe Santo de Sanibel Condominium Association, Inc., a Florida corporation not for profit, hereinafter the "Association." The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Condominium parcels. The acquisition of title to a unit or any other interest in the Condominium property, or the lease, occupancy, or use of any portion of a unit or the Condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

2. **NAME AND ADDRESS:** The name of this Condominium is Pointe Santo de Sanibel, a Condominium, and its street address is 2445 West Gulf Drive, Sanibel, Florida 33957.

3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration (hereinafter the "Land") is legally described in Exhibit "B" to the original Declaration, which Exhibit is hereby incorporated by reference.

OR2822 PG0751

4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The "Condominium Act"), unless the context otherwise requires.

4.1. **"Apartment"** has the same meaning as the term "unit" as defined in the Condominium Act.

4.2. **"Apartment Owner"** or **"Owner"** has the same meaning as the term "unit owner" as defined in the Condominium Act, except that for purposes of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word "owner" refers to the primary occupant and not the record owner.

4.3. **"Assessment"** means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

4.4. **"Association"** means Pointe Santo de Sanibel Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.5. **"Association property"** means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

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

4.7. **"Condominium Documents"** means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4.8. **"Common Elements"** means and includes all of the property submitted to condominium ownership that is not within the unit boundaries in Section 5 below.

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

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

4.10. **"Guest"** means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.11. **"Institutional Mortgagee"** means the mortgagee (or its assignee) of a mortgage against a Condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Condominium parcel which mortgage is

guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.12. **"Lease"** means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

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

4.14. **"Occupy"**, when used in connection with a unit, means the act of staying overnight in a unit. **"Occupant"** is a person who occupies a unit.

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

4.16. **"Primary Occupant"** means the person designated pursuant to Section 12.12 below when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee, or a corporation, or other entity which is not a natural person.

4.17. **"Rules and Regulations"** means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.

4.18. **"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 Association matters. There are fifty-six (56) units in Pointe Santo de Sanibel Condominium and eighty-five (85) units in Pointe Santo de Sanibel Condominium II, so the total number of voting interests in the Association is one hundred forty-one (141) votes.

5. **DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:**

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

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

(A) **Horizontal Boundaries.** The upper and lower boundaries of the unit shall be the following:

(1) **Upper Boundaries.** The horizontal plane of the unfinished under surface of the concrete floor slab abutting the upper unit or roof.

(2) Lower Boundaries.

- (a) Ground Floor Units. The upper surface of the concrete floor slab.
- (b) Unit Other Than Ground Floor Units. The plane of the upper surfaces of the concrete floor slabs, abutting the lower unit.

(B) Vertical Boundaries. The vertical boundaries of the unit shall be:

- (1) Exterior Boundaries. The interior plane of the outside concrete or block walls of the unit.
- (2) Between Units. The interior plane of the concrete wall between the units.
- (3) Between Units and Central Corridors or Between Units and Other Common Use Areas. The plane formed by the interior of the unit wall between the unit and said corridors or common use areas.

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

(D) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the perimetrical boundaries shall extend to the interior unfinished surfaces of such apertures, and their frameworks thereof. Exterior surfaces made of glass or other transparent material and all framings, casings and hardware therefor, shall be included in the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the survey of the units set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of Sections 5.2(D) above shall control over the survey.

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

6.1. Shares of Ownership. The Condominium contains fifty-six (56) units. The owner of each unit shall also own a fifty-sixth (1/56) undivided share in the common elements and the common surplus.

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

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Second Amended and Restated Bylaws and Articles of Incorporation of the Association, attached hereto as Exhibits "D" and "E", respectively.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.

- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically, subject to the other provisions contained elsewhere herein.
- (E) Other appurtenances as may be provided in this Declaration and its exhibits.

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

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

6.4. Garages. Exhibit "B" (attached to the originally recorded Declaration) designates certain garages. Title to each garage is vested in various individual unit owners or the Association. Each garage is capable of being separately conveyed but any such conveyance shall be to another unit owner or the Association. No unit owner may acquire more than two (2) garages per unit owned. The maintenance, repair and replacement thereof shall be at the expense of the record owner of title as provided for in Section 11 of this Declaration.

6.5. Recreation Areas. The land which constitutes the "Common Recreation Area" legally described in Exhibit "B" (attached to the originally recorded Declaration) is owned by the Association for the use and benefit of the occupants of all one hundred and forty-one (141) units. The expense of the maintenance, repair and replacement of the recreation areas, and any improvements thereto, shall be the Association's responsibility..

7. COMMON ELEMENTS; EASEMENTS:

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

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

7.2. **Easements.** Each of the following easements and easement rights is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) **Utility and other Easements.** The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the common elements or Association property, and to grant easements or relocate any existing easements in any portion of the common elements or Association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.
- (B) **Encroachments.** If for any reason other than the intentional act of the unit owner or the Association, any unit encroaches upon any of the common elements or upon any other unit, or any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (C) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.
- (D) **Air Space.** An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time, subject to the other provisions herein.

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

8. **LIMITED COMMON ELEMENTS:**

8.1. **Description of Limited Common Elements.** Certain common elements have been reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common

elements and the units to which their exclusive use is appurtenant, are as described in this Declaration and its recorded exhibits. The following common elements are hereby designated as limited common elements:

- (A) Storage Lockers. Certain storage lockers have been designated as limited common elements. Each locker has been assigned to the exclusive use of a certain unit. No storage locker may be assigned to another unit except as provided by Section 8.2(A) hereof. The exterior surfaces of the lockers will be maintained by the Association and the cost shall be a common expense.
- (B) Parking Spaces. There have been designated, on the attached survey and plot plan, certain parking spaces as limited common elements. These parking spaces have been assigned to the exclusive use of specific units as identified in the survey and plot plan. The cost of maintenance of all parking spaces shall be a common expense.
- (C) Stairs. Any stairways, stairwells and railings which are attached to and which exclusively serve particular units are limited common elements for the exclusive use of the units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the owner of the unit.
- (D) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit.
- (E) Sun/Roof Decks. Exhibit "B" designates certain sun/roof decks. These sun/roof decks shall be limited common elements assigned for the exclusive use of the following units: D41, D42, D43, D44, D45, D46, D47, E41, E42, E43, E44, E45, E46 and E47. Routine maintenance of the sun/roof decks shall be the responsibility of the Association at the expense of the unit owner having the right to use same. At such time as the roof is to be replaced or substantially repaired, all costs associated with the removal, repair, or replacement of the limited common element sun/roof decks shall be treated as a common expense.
- (F) Privacy Fences. The following units have privacy fences which shall be for the exclusive use of the respective unit and shall be treated as Limited Common Elements: D1, D7, D41, D42, D43, D44, D45, D46, D47, E1, E7, E41, E42, E43, E44, E45, E46 and E47. The maintenance, repair and replacement of the privacy fences will be treated as an expense of the unit owner to which it is appurtenant, with the exception of the maintenance, repair, and replacement of the privacy fence hardware which is used to attach the fences to the roof, which expense shall be treated as a common expense of the Association. If the Association determines it is necessary to remove the privacy fences at any time for the repair or replacement of the roof structure, then the removal and the reinstallation of the privacy fences shall be considered a common expense of the Association.
- (G) Others. Except for garages, any part of the common elements that is connected to or exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically

OR2822 PG0757

described above or not. This paragraph includes windows, screens and doors, including all hardware and framings therefor.

8.2. Exclusive Use; Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to a particular parking place or storage locker may be exchanged between units or transferred to another unit as follows:

- (A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration, and be executed by the Association and the owners with the formalities required for the execution of a deed.
- (B) The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of Lee County, Florida. The costs of preparing and recording the Certificate shall be borne by the unit owners desiring the exchange or transfer.

8.3. Maintenance, Repair and Replacement of Certain Limited Common Elements. The limited common elements described in Section 8.1 (C), (E), and (F) above are available only to certain units, and not to all units generally. The maintenance, repair and replacement of limited common elements shall be as set forth in Section 8.1 above.

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

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

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

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

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

9.5. Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these Condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors

of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6. Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium documents. The Association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association property. The Association may impose fees for the use of common elements or Association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium.

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

9.8. Purchase of Units. The Association has the power to purchase and acquire real and personal property, including one or more units in the Condominium, and to own, lease, mortgage, or convey same, such power to be exercised by the Board of Directors.

9.9. Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 9.8 above.

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

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

9.12. Member Approval of Certain Litigation. Notwithstanding any other provisions of the Condominium documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests present and voting at a meeting at which there is a quorum, prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which owners are obligated to pay;
- (C) the enforcement of the use and occupancy restrictions applicable to the Condominium;
- (D) the enforcement of any restrictions on the sale, lease and other transfer of units;

- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of more than minimal injury to the Association or its members; or
- (F) filing a compulsory counterclaim.

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

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

10.2. Share of Common Expenses. The owner of each unit shall be liable for a share of the common expenses of the Association in an amount equal to the following fraction: 1/141st

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

10.4. Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 18.3 below as to certain first mortgagees, whenever title to a Condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5. No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 18.3 below as to certain first mortgagees.

10.6. Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law (currently eighteen percent (18%) per annum), calculated from the date due until paid. The Association may also impose a late payment fee (in addition

to interest) to the extent permitted by law (currently the greater of twenty-five dollars (\$25.00) or five percent (5%) of each installment of the assessment for each delinquent installment that payment is late). Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

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

10.8. Liens. The Association has a lien on each Condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Said lien cannot secure fines, charges or other fees. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the Condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

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

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

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

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

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Rough plumbing.
- (C) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (D) The exterior surface of the entrance doors to the units.
- (E) All exterior building walls.
- (F) The main water supply shut-off valves for units if not within the units.

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

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

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.

- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit if located in the unit.
- (L) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (M) All interior, partition walls which do not form part of the boundary of the unit.
- (N) All drywall, lath, plasterboard, furring and similar materials in the perimeter walls and ceilings of the unit.

11.3. Other Unit Owner Responsibilities:

- (A) Patios, Porches, Sun/Roof Decks, etc. Where a limited common element consists of a porch, patio, lanai, privacy fence area, sun/roof deck or roof area, the unit owner who has the right of exclusive use of the area shall be responsible for the maintenance, repair and replacement of the said limited common element, including any railings or fences and any fixed and/or sliding glass doors in said limited common element, if any, and except to the extent specifically provided in Section 8.1 above, notwithstanding any language contained within this entire Section 11 to the contrary; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs. No unit owner shall be permitted to place carpeting on any porch, patio, lanai, privacy fence area, sun/roof deck or roof area.
- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (C) Garages. Each owner of a garage shall be responsible for the maintenance of its interior and its mechanical components and all expenses thereof. The exterior will be maintained, repaired and replaced by the Association but at the sole expense of the garage owner. No material alterations may be made to a garage without the consent and approval of the Board of Directors.
- (D) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.

DR2822 P60763

(E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and his successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other part of the Condominium property.

11.4. Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

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

11.6. Alterations and Additions to Common Elements and Association property. The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$50,000.00 in the aggregate in any calendar year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or Association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

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

11.8. Negligence; Damage Caused by Condition in Unit. The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his

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

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

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

11.11. Hurricane Shutters. The Board of Directors shall adopt hurricane shutter specifications for each building within the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board.

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

12.1. Units. Generally, each unit shall be occupied by only one family at any time, as a residence and for no other purpose. No business or commercial activity shall be conducted in or from any

unit. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use.

12.2. Leasing of Units. There shall be no more than one (1) rental per seven (7) day period per unit. If a unit is leased, notice of that fact must be delivered to the Association's management company.

12.3. Occupancy. No person under the age of twenty-two (22) years shall lease any unit unless accompanied by an individual aged twenty-two (22) years or older. All occupants under twenty-two (22) years of age shall be closely supervised at all times by an individual aged twenty-two (22) or older to insure that they do not become a source of annoyance to other residents.

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

12.5. Nuisances. No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential Condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.6. Signs. No person may post or display "For Sale" or "For Rent" or the identification of any business or other similar signs anywhere within the Condominium or on the Condominium property without the written consent of the Board.

12.7. Use of Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

12.8. Use of Common Elements and Association property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term, except as otherwise may be required by law subject to regulation by the Board of Directors.

12.9. Regulation by Association. All of the provisions of the Condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be

included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

12.10. Fees and Deposits Related to the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law (currently \$100.00 per applicant with husband and wife or parent and child considered one applicant). No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

12.11. Transfer of Ownership of Units. All units and parcels of ownership are freely transferable subject only to those conditions contained in this Declaration.

12.12. Designation of Primary Occupant. Each owner of a unit which is owned by a corporation, partnership, trust, or other entity which is not a natural person or by co-owners other than husband and wife, shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

12.13 Number of Units. No owner may own or acquire title to more than a combined total of nine (9) units in Pointe Santo de Sanibel Condominium and Pointe Santo de Sanibel Condominium II. An owner owning more than nine (9) units on the effective date of this amendment may continue to own said units, but may not acquire any additional or different units by purchase or other means except exchange. For purpose of determining ownership of units, the constructive ownership rules of Section 318 of the Internal Revenue Code of 1954, as amended from time to time, shall govern.

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

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

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

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

- (A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.
- (B) Flood. In amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance Program.
- (C) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- (D) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.
- (E) Workers' Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- (F) Statutory Fidelity Bond. The Association shall maintain a fidelity bond in an amount of not less than \$50,000.00 per director, officer, or employee having access to Association funds.

13.4. Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners.

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

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

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

- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units in Pointe Santo de Sanibel Condominium and Pointe Santo de Sanibel Condominium II.
- (B) Units. Proceeds on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all one hundred and forty-one (141) units, less the deductible.

- (C) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except when the funds are not used for repairs or to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

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

- (A) Costs of Protecting and Preserving the Property. If a person other than the person responsible for repair and reconstruction has advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.
- (B) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the unit owners and their mortgagees, remittances being paid jointly to them.
- (C) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the unit owners and their mortgagees, remittances being payable jointly to them.

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

14. RECONSTRUCTION OR REPAIR AFTER CASUALTY: If any part of the Condominium property of Pointe Santo de Sanibel Condominium or Pointe Santo de Sanibel Condominium II is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

14.1. Damage to Units. Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 13.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage unless legal impossibility precludes reconstruction and repair in which case the affected unit owners retain the proceeds.

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

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction or substitution therefor where legal impossibility prevents repair and reconstruction.
- (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements of either Pointe Santo de Sanibel or Pointe Santo de Sanibel Condominium II, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.
- (C) If reconstruction of the same number and general type of unit is not permitted by law, a membership meeting shall be called by the Board of Directors within sixty (60) days after the casualty. The Condominium shall continue at a reduced number of units unless two-thirds (2/3) of the entire voting interests of the Association shall vote for termination.

14.3. **"Very Substantial" Damage.** As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least two-thirds (2/3rds) of the units in Pointe Santo de Sanibel Condominium and two-thirds (2/3rds) of the units in Pointe Santo de Sanibel Condominium II cannot reasonably be rendered habitable within ninety (90) days. Should such "very substantial" damage occur then:

- (A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the Condominium property or Association property as might be reasonable under the circumstances to protect the Condominium property or Association property from further damage or deterioration. This authority includes the authority to expend any and all available Association funds.
- (B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.
- (C) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the Association membership with reference to rebuilding or termination of the Condominium, subject to the following:
 - (1) If the insurance proceeds, reserves and other Association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished with a special assessment not exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.

(2) If reconstruction of the same number and general types of units is not permitted by law, or if the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then unless two-thirds (2/3rds) of the total voting interests vote in favor of any such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If the requisite number of unit owners approve reconstruction, the Board of Directors shall levy such assessments as are necessary and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and restoration of the property.

(D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination approved by at least two-thirds (2/3rds) of the Board of Directors shall be conclusive, and shall be binding upon all unit owners.

14.4. Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and restoration come first from insurance proceeds; if there is a balance left in the insurance proceeds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners in Pointe Santo de Sanibel and Pointe Santo de Sanibel Condominium II, except as otherwise provided in Section 13.8(C) above.

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

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

15. CONDEMNATION:

15.1. Deposit of Awards with Association. The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association for the benefit of all of its members; and if any fail to do so, a special charge shall be made

against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

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

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

15.4. 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, except as may otherwise be required by F.S. 73.073.

15.5. Units Reduced but Habitable. If the condemnation reduces the size of a unit and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Restoration of Unit. The unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.
- (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.
- (C) Adjustment of Shares in Common Elements. If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

15.6. Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Payment of Award. The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).

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

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

15.8. Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment need be approved only by the owners of a majority of the units. Approval of or joinder by lien holders is not required for any such amendment.

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

16.1. Agreement. The Condominium may be terminated at any time by written agreement of the owners of at least eighty percent (80%) of the units, and the Primary Institutional Mortgagee.

16.2. Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 14.3, and it is not decided as therein provided that

it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

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

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

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

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

16.7. Provisions Survive Termination. The provisions of this Section 16 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

17. OBLIGATIONS OF OWNERS AND ENFORCEMENT:

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

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

17.2. Creation and Enforcement of Charges. The Association shall have a cause of action against unit owners to secure payment to the Association by unit 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.

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

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

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

17.6. Notice of Lien or Suit. A unit owner shall give to the Association written notice of every lien (other than those relating to mortgages, taxes, or special assessments) on his unit within five (5) days after receiving actual notice of the attachment thereof.

18. RIGHTS OF MORTGAGEES:

18.1. Approvals. Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided in Sections 15.5(C), 15.6(C) and 15.8.

18.2. Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice, if such holder has previously requested such type of notice.

18.3. First Mortgage Foreclosure. If the mortgagee of a first mortgage of record acquires title to a Condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or assessments attributable to the Condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the first mortgagee is required to pay under the Condominium Act, as it may be amended from time to time. No acquirer of

title to a Condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

18.4. Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with or without the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale, subject to the rights of the mortgagor. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

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

18.6. Financial Statement. Any institutional mortgagee is entitled, upon written request, to a copy of the most recent financial report or financial statement of the Association.

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

- (A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. An increase in coverage shall not be deemed a material modification under this paragraph, nor shall any change in coverage which is mandatory under the Condominium Act as amended from time to time.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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

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

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

19.3. Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the entire voting interests either voting in person or by proxy at any annual or special meeting called for the purpose, or by consent.

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

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

19.6. Enlargement of Common Elements. The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through amendment of this Declaration. The amendment must be approved by at least two-thirds (2/3rds) of the voting interests, but no other person need join in or consent to the amendment. The amendment divests the Association of title and vests title in the unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the units.

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

20. MISCELLANEOUS:

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

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

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

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

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

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

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

20.8. Time Share Prohibited. No time share estates may be created in this Condominium.

IN WITNESS WHEREOF, the Association has executed this Second Amended and Restated Declaration of Condominium the day and year first above written.

Signed in the presence of: POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

Sherry Romisher
Witness

By: John S. McGuire
John S. McGuire, President

Sherry Romisher
(Print Name)

(CORPORATE SEAL)

Rose Mary Mandujano
Witness

Rose Mary Mandujano
(Print Name)

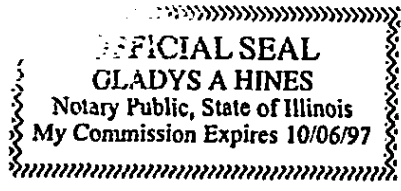
STATE OF ILLINOIS)
COUNTY OF Lake) §:

I hereby certify that on the 18th day of April, 1997, personally appeared before me John S. McGuire, President of Pointe Santo de Sanibel Condominium Association, Inc., a Florida corporation not for profit, who executed the foregoing certificate in the name and on behalf of said corporation. He is known to me or has produced _____ as identification, and did not take an oath.

Gladys A Hines
Notary Public

My Commission Expires: 10/6/97

GLADYS A HINES
(Print Name)



4/10/97 4 15pm
C:\CLIENTS\PTSANTO\DECLARATA&R



NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE AMENDED AND RESTATED BYLAWS. FOR PRESENT TEXT SEE EXISTING AMENDED AND RESTATED BYLAWS.

SECOND AMENDED AND RESTATED BYLAWS

OF

POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

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

1.1. **Principal Office.** The principal office of the Association is at 2445 West Gulf Drive, Sanibel, Florida 33957.

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

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

2. **MEMBERS.**

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

- (A) Delivery to the Association, if required, of a written designation of a primary occupant.
- (B) Recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.
- (C) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

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

a unit do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a unit is not a natural person, the vote of that unit shall be cast by the unit's primary occupant.

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

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

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

3. MEMBERS' MEETINGS; VOTING.

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

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

3.3. Notice of Members' Meetings. Notice of members' meetings, including a recall meeting and the annual meeting, which must include an identification of agenda items, must state the time, date, and place of the meeting, and shall be delivered or mailed to each unit owner by first class mail, unless waived in writing, at least fourteen (14) days prior to the meeting, provided, however, that any election at which one or more Directors are to be elected must be noticed as provided for in Section 4.3 below. An officer of the Association or the Manager shall execute an affidavit of mailing or delivery per F.S. 718.112(2)(d)(2) or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the Condominium property at least fourteen (14) continuous days prior to the annual meeting. The Board, upon notice to unit owners shall by duly adopted rule designate a specific location on the Condominium property upon which all notices of unit owner meetings shall be posted. If ownership of a unit is transferred after notice has been mailed, no separate notice to the new owner is required. Attendance at any members' meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting.

3.4. Quorum. A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership.

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

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

3.7. Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened without further notice at a specific later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

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

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

3.9. Minutes and Inspection of Records. Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a businesslike manner, shall be reduced to written form within thirty (30) days, and kept for a period of seven (7) years after the meeting. These minutes, plus records of all receipts and expenditures and all other official records, as defined in F.S. 718.111, except those which may be exempted by the Condominium Act and/or the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes from time to time, shall be available for inspection by unit owners and

Board members within five (5) working days after receipt of a written request by the Board or its designee. This provision shall be deemed to have been complied with by having a copy of the official records available for inspection or copying on the Condominium or Association property. Provided, however, that the Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

3.10. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11. Action by Members Without Meeting. Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written expressions of approval are received by the Secretary within sixty (60) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members meeting held on the date of the Board meeting. Any expression of approval not so received within such sixty (60) day period shall not be considered. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of members' rights to call a special meeting of the membership, as provided in Section 3.2 above. If the vote is taken by the method described in this Section, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

4.1. Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be seven (7). In order to provide for a continuity of experience, the terms shall be staggered. All Directors shall be elected for two (2) year terms. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy between annual elections, as provided in Section 4.4 below.

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

4.3. Elections. In each annual election the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

- (A) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any unit owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than thirty (30) days before the scheduled election the Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than thirty (35) days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall have no liability for its contents but shall not edit, alter, or otherwise modify the content of the information sheet. However, in order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.
- (B) A voting machine may also be used by those attending the meeting in person, and a unit owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a member of the Board of Directors or other unit owner but no unit owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.
- (C) At least twenty percent (20%) of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.
- (D) An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.
- (E) In the event of a tie for a designated position of the Board, the tie shall be resolved by agreement of the candidates, if possible; otherwise, a runoff election shall be held in accordance with Rule 61B-23.0021, Florida Administrative Code.

4.4. Vacancies on the Board. If the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

- (A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office until the next annual meeting. At the option of the Board, the successor may be elected by secret ballot of the members in a special election conducted in conjunction with a special meeting of the members, in which case the successor shall be elected to serve the entire remaining term.
- (B) If a vacancy occurs as a result of a recall pursuant to Section 4.5 and less than a majority of the Directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors, though less than a quorum, provided however, that a Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled as provided by law.

4.5. Removal of Directors. Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose in the manner provided in the Condominium Act. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than ten (10) days nor more than sixty (60) days from the date when the notice of the recall meeting is mailed or delivered.

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

4.7. Other Meetings. Meetings of the Board may be held at such time and place in Lee County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, facsimile machine, or telegram at least four (4) days prior to the day named for such meeting.

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

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

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

4.11. Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

4.12. Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.

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

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

4.15. Director conflicts of interest.

(1) Directors shall disclose conflicts of interest and any pecuniary or economic interest as to any matter under consideration by the Board.

(2) No contract or other transaction between the Association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, ratifies such contract or transaction, or because his or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consent of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the members entitled to vote on such contract or transaction, if any, and they authorize, approve, ratify it by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the Association at the time it is authorized by the board, a committee, or the members.

(3) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

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

4.17. Emergency Powers. The following shall apply to the extent not viewed to be in conflict with the Condominium Act:

- (A) In anticipation of or during any emergency defined in Paragraph (E) below, the Board of Directors of the Association may:
 - (1) Modify lines of succession to accommodate the incapacity of any Director, officer, employee or agent of the Association; and
 - (2) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.

- (B) During an emergency defined in Paragraph (E) below:
 - (1) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
 - (2) One or more officers of the Association present at a meeting of the Board of Directors may be deemed to be Directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and
 - (3) The Director or Directors in attendance at a meeting shall constitute a quorum.

- (C) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:
 - (1) Binds the Association; and
 - (2) May not be used to impose liability on a Director, officer, employee, or agent of the Association.

- (D) An officer, Director, or employee of the Association acting in accordance with any emergency Bylaws is only liable for willful misconduct.

- (E) An emergency exists for purposes of the Section if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

5. OFFICERS.

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

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

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

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

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

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

6.1. **Depository.** The Association shall maintain its funds in federally insured investment vehicles and accounts as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. Reserve and operating funds shall not be commingled for any purpose.

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

If the budget requires assessments against the owners which exceed 115% of the assessments for the proceeding year, the Board, upon written application of ten percent (10%) of the voting interests, shall call a special meeting of the unit owners within thirty (30) days, upon not less than ten (10) days' written notice to each unit owner. At the special meeting, unit owners shall consider and

enact a budget. The adoption of the budget shall require a vote of not less than a majority vote of the entire voting interests. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the Board of Directors shall go into effect as scheduled. In calculating whether assessments exceed 115% of the assessments for the previous year, the Board and unit owners shall exclude from the computation those amounts required to be excluded by law.

6.3. Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, pavement resurfacing, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. These reserves shall be fully funded unless the members subsequently determine at a duly called meeting by majority vote of the voting interests to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in 6.2 above. Reserves funded under this paragraph, and all interest earned on such reserves, shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority of the voting interests present in person or by proxy and voting at a members' meeting called for the purpose.

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

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

6.6. Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

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

6.8. Financial Reports. A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with F.S. 718.111(13) or in lieu thereof (if required by Rule 61B-23.004, Florida Administrative Code) a complete set of financial statements. A copy of the report or the financial statements shall be furnished to each member within thirty (30) days after its completion and delivery to the Directors or at the annual meeting.

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

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

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

8. COMPLIANCE AND DEFAULT; REMEDIES. In addition to the remedies provided in Section 18 of the Declaration of Condominium, the following provisions shall apply:

8.1. Fines. The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the condominium documents or the rules and regulations, or condone such violations by their family members, guests or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law (currently \$100.00 per violation), and no fine may be levied against an unoccupied unit. A fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed the maximum amount allowed by law (currently \$1,000.00). The procedure for imposing fines shall be as follows:

- (A) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:
 - (1) A statement of the date, time and place of the hearing;
 - (2) A specific designation of the provisions of the Declaration, Bylaws or rules which are alleged to have been violated; and,
 - (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
 - (4) The amount of any proposed fine.

(B) At the hearing the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the committee, by majority vote, does not agree with the fine, it may not be levied.

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

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

9. CONTRACTS FOR PRODUCTS AND SERVICES; REQUIREMENTS. All contracts for the purchase, lease, or renting of materials or equipment or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment exceeding five percent (5%) of the total annual budget of the Association, including reserves, except for contracts with employees of the Association, and for attorneys, accountants, architects, engineering and landscape architects, the Association shall obtain 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. The Association need not accept the lowest bid. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time including the right of the Association to opt out of the requirements of this Paragraph.

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

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

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

10.3. Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, a proposed amendment to these Bylaws shall be adopted if it is approved by concurrency of a majority of the entire voting interests, in person or by proxy, either at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law, or pursuant to Section 3.11 hereof.

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

11. MISCELLANEOUS.

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

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

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

11.4. Fire Safety Compliance. The Board of Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the units with the applicable Fire and Life Safety Code.

State of Florida



Department of State

DR2822 PG0791

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on May 2, 1997, for POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is 769963.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capitol, this the
Sixth day of May, 1997



CR2EO22 (2-95)

Sandra B. Northam

Sandra B. Northam
Secretary of State

This instrument prepared by:
Christopher N. Davies, Esq.
CHRISTOPHER N. DAVIES, P.A.
12601 World Plaza Lane, Suite 2
Fort Myers, FL 33907

FILED
97 MAY -2 PM 1:59
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

DR2822 P60792

CERTIFICATE OF AMENDMENT
SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF

POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

THE UNDERSIGNED, being the duly elected and acting President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, does hereby make, subscribe, acknowledge and file with the Secretary of State this Second Amended and Restated Articles of Incorporation and certify that at a duly called meeting of not less than a majority of the voting interests ^{members} present in person or by proxy, held on January 25, 1997, where a quorum was present, after unanimous adoption of a resolution proposing said amendments by the Board of Directors, the Second Amended and Restated Articles of Incorporation were approved by the required vote to amend same.

The Articles of Incorporation of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., are, and shall hereby be, revised as the Second Amended and Restated Articles of Incorporation attached hereto as Exhibit "A" and by reference made a part hereof.

IN WITNESS WHEREOF, POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., has caused these Second Amended and Restated Articles of Incorporation to be executed in accordance with the authority hereinabove expressed this 18th day of April, 1997.

Dated: April 18, 1997

POINTE SANTO DE SANIBEL
CONDOMINIUM ASSOCIATION, INC.

Sherry Romisher
Witness

By: John S. McGuire
John S. McGuire President

Sherry Romisher
(Print Name)

(CORPORATE SEAL)

Rose Mary Manduyari
Witness

Rose Mary Manduyari
(Print Name)

STATE OF Illinois)

COUNTY OF Lake) §:

The foregoing instrument was acknowledged before me this 18th day of April, 1997, by John S. McGuire, President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the Association. Who is personally known to me or who produced _____

_____ (type of identification and who did (not) take an oath.

Gladys A Hines
Notary Public

GLADYS A. HINES
(Print Name)

My Commission Expires:

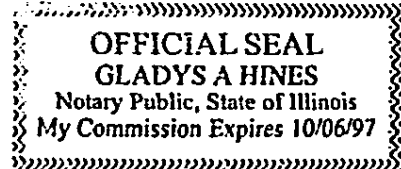


Exhibit "A"

NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE AMENDED AND RESTATED ARTICLES OF INCORPORATION.
FOR PRESENT TEXT SEE EXISTING AMENDED AND RESTATED ARTICLES OF INCORPORATION.

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

Pursuant to Section 617.1007, Florida Statutes, the Amended and Restated Articles of Incorporation of Pointe Santo de Sanibel Condominium Association, Inc., a Florida not-for-profit corporation, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1007, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Second Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.1007 and the omission of matters of historical interest. The Second Amended and Restated Articles of Incorporation of Pointe Santo de Sanibel Condominium Association, Inc., shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation, herein called the "Association," is Pointe Santo de Sanibel Condominium Association, Inc., and its address is 2445 West Gulf Drive, Sanibel, Florida 33957.

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of Pointe Santo de Sanibel Condominium, a Condominium, located in Lee County, Florida.

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

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

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- (D) To reconstruct improvements after casualty and to make further improvements of the condominium property.
- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, limited common elements and units in the operation of the Association.
- (F) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (G) To contract for the management and maintenance of the condominium and the condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (H) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (I) To own or lease real property, and to enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.
- (J) To borrow money if necessary to perform its other functions hereunder.

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

ARTICLE III

MEMBERSHIP:

- (A) The members of the Association shall be the record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to one (1) vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE IV

TERM: The term of the Association shall be perpetual.

ARTICLE V

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

ARTICLE VI

DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws.
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

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

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by written petition, signed by at least one-fourth (1/4th) of the voting interests.
- (B) Procedure. Upon any amendment to these Articles being proposed by said Board or unit owners, such proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.
- (C) Vote Required. Except as otherwise provided for by Florida law, these Articles of Incorporation may be amended by concurrence of a majority of the entire voting interests at any annual or special meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a copy of the proposed amendment.
- (D) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lec County, Florida.

ARTICLE VIII

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The rights to indemnification shall also not apply to:

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

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

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CERTIFICATE OF AMENDMENT

SECOND AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF POINTE SANTO DE SANIBEL CONDOMINIUM II, A CONDOMINIUM

SECOND AMENDED AND RESTATED

ARTICLES OF INCORPORATION AND BYLAWS

OF POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

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• RECORD VERIFIED - CHARLIE GREEN, CLERK •
• BY: MARY JO ROBINSON, D.C. •

THE UNDERSIGNED, being the duly elected and acting President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, does hereby certify that at a duly called meeting of the Board of Directors, where a quorum was present, all the resolutions set forth below were approved. Thereupon, at the Annual Meeting of the members held on January 25, 1997 and the Special Meeting held on March 7, 1997, where a quorum was present, after due notice, the resolutions were approved and adopted by the votes indicated for the purposes of amending the Declaration of Condominium of POINTE SANTO DE SANIBEL CONDOMINIUM II, A CONDOMINIUM, as originally recorded at Official Record Book 1192, Page 1802, et seq., and the Amended and Restated Declaration of Condominium recorded in Official Record Book 1954, Page 3509, including any and all amendments thereto, Public Records of Lee County, Florida, and the Articles of Incorporation and Bylaws of the corporation.

1. The following resolution was approved by concurrence of at least two-thirds (2/3) of the voting interests of the members of the Association then present and voting at a duly called meeting in person or by proxy:

RESOLVED: That the Amended and Restated Declaration of Condominium of POINTE SANTO DE SANIBEL CONDOMINIUM II, A CONDOMINIUM, be and is hereby amended, and the Second Amended and Restated Declaration of Condominium is adopted in the form attached hereto as Exhibit "A", and made a part hereof; and

2. The following resolutions were approved by at least a majority of the voting interests of the members of the Association then present and voting at a duly called meeting in person or by proxy:

RESOLVED: That the Bylaws of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., be and are hereby amended, and the Second Amended and Restated Bylaws are adopted in the form attached hereto as Exhibit "D", and made a part hereof; and

3. The following resolutions were approved by at least a majority of the voting interests of the members of the Association then present and voting at a duly called meeting in person or by proxy:

RESOLVED: That the Articles of Incorporation of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., be and are hereby amended and the Second Amended and Restated Articles of Incorporation are adopted in the form attached hereto as Exhibit "E", and made a part hereof; and it is further

RESOLVED: That the officers and Directors are hereby instructed and authorized to execute the aforementioned documents and cause them to be filed of public record, together with a Certificate of Amendment as required by law.

Dated: April 18, 1997

Signed, sealed and delivered in the presence of:

Sherry Romsher
Witness

Sherry Romsher
Print Name

By: John S. McGuire
John S. McGuire, President

(Seal)

Rose Mary Manduyano
Witness

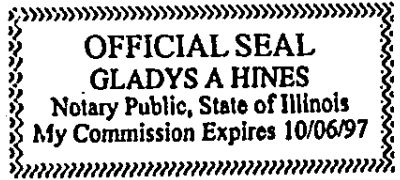
Rose Mary Manduyano
Print Name

STATE OF Illinois
COUNTY OF Lake) §:

The foregoing instrument was acknowledged before me this 18th day of April, 1997, by JOHN S. MCGUIRE, President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., on behalf of the Association. He is personally known to me or has produced _____ as identification.

Gladys A Hines
Notary Public
GLADYS A HINES
(Print Name)

My Commission Expires:



EXHIBITS TO DECLARATION

The following exhibits were recorded on April 11, 1977, together with the Declaration of Condominium of POINTE SANTO DE SANIBEL CONDOMINIUM II , a Condominium, by Declaration created on the same date, at Official Record Book 1192, Page 1802, et seq., Public Records of Lee County, Florida. These exhibits, as previously amended to date, are hereby incorporated by reference as exhibits to the attached Second Amended and Restated Declaration of Condominium.

- EXHIBIT "A" - IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT
- EXHIBIT "B" - LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY, SURVEY OF CONDOMINIUM PROPERTY AND PLOT PLANS
- EXHIBIT "F" - DEVELOPER'S COMMITMENT TO PHASE DEVELOPMENT
- EXHIBIT "G" - OPERATING BUDGET FOR CONDOMINIUM ASSOCIATION AND SCHEDULE OF UNIT OWNERS' EXPENSES
- EXHIBIT "H" - FORM OF DEED

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

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

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instrument prepared by:
Christopher N. Davies, Esquire
CHRISTOPHER N. DAVIES, P.A.
12601 World Plaza Lane, Suite 2
Fort Myers, FL 33907

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NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION. FOR PRESENT TEXT SEE EXISTING AMENDED AND RESTATED DECLARATION OF CONDOMINIUM.

SECOND AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF

POINTE SANTO DE SANIBEL CONDOMINIUM II, A CONDOMINIUM

On April 11, 1977, the original Declaration of Condominium of Pointe Santo de Sanibel Condominium II, a Condominium (hereinafter the "Condominium") was recorded in Official Record Book 1192, at Page 1802, et seq., of the Public Records of Lee County, Florida. The original Declaration of Condominium was subsequently amended and restated and the Amended and Restated Declaration of Condominium was recorded in the Public Records of Lee County, Florida on November 23, 1987, at Official Records Book 1954, Page 3509, et seq. That Amended and Restated Declaration of Condominium is hereby further amended in part and is restated in its entirety by this document known as the Second Amended and Restated Declaration of Condominium.

- 1. SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Second Amended and Restated Declaration of Condominium is made by Pointe Santo de Sanibel Condominium Association II, Inc., a Florida corporation not for profit, hereinafter the "Association." The land subject to this Declaration and the improvements located thereon have already been submitted to condominium ownership and use pursuant to the Florida Condominium Act. No additional property is being submitted to condominium ownership by this Declaration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of Condominium parcels. The acquisition of title to a unit or any other interest in the Condominium property, or the lease, occupancy, or use of any portion of a unit or the Condominium property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.
- 2. NAME AND ADDRESS:** The name of this Condominium is Pointe Santo de Sanibel II, a Condominium, and its street address is 2445 West Gulf Drive, Sanibel, Florida 33957.
- 3. DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the condominium form of ownership by the original Declaration (hereinafter the "Land") is legally described in Exhibit "B" to the original Declaration, which Exhibit is hereby incorporated by reference.

4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The "Condominium Act"), unless the context otherwise requires.

4.1. **"Apartment"** has the same meaning as the term "unit" as defined in the Condominium Act.

4.2. **"Apartment Owner"** or **"Owner"** has the same meaning as the term "unit owner" as defined in the Condominium Act, except that for purposes of interpreting use and occupancy restrictions related to units, in cases where a primary occupant has been designated for a unit because of its ownership, the word "owner" refers to the primary occupant and not the record owner.

4.3. **"Assessment"** means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

4.4. **"Association"** means Pointe Santo de Sanibel Condominium Association II, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.5. **"Association property"** means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

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

4.7. **"Condominium Documents"** means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4.8. **"Common Elements"** means and includes all of the property submitted to condominium ownership that is not within the unit boundaries in Section 5 below.

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

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

4.10. **"Guest"** means any person who is not the unit owner or a lessee or a member of the owner's or lessee's family, who is physically present in, or occupies the unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.11. **"Institutional Mortgagee"** means the mortgagee (or its assignee) of a mortgage against a Condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America.

The term also refers to any holder of a mortgage against a Condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.12. "Lease" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

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

4.14. "Occupy", when used in connection with a unit, means the act of staying overnight in a unit. "Occupant" is a person who occupies a unit.

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

4.16. "Primary Occupant" means the person designated pursuant to Section 12.12 below when title to a unit is held in the name of two or more persons who are not husband and wife, or by a trustee, or a corporation, or other entity which is not a natural person.

4.17. "Rules and Regulations" means those rules and regulations promulgated by the Board of Directors, governing the use of the common elements and the operation of the Association.

4.18. "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 Association matters. There are fifty-six (56) units in Pointe Santo de Sanibel Condominium and eighty-five (85) units in Pointe Santo de Sanibel Condominium II, so the total number of voting interests in the Association is one hundred forty-one (141) votes.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:

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

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

(A) Horizontal Boundaries. The upper and lower boundaries of the unit shall be the following:

(1) Upper Boundaries. The horizontal plane of the unfinished under surface of the concrete floor slab abutting the upper unit or roof.

- (2) Lower Boundaries.
 - (a) Ground Floor Units. The upper surface of the concrete floor slab.
 - (b) Unit Other Than Ground Floor Units. The plane of the upper surfaces of the concrete floor slabs, abutting the lower unit.

- (B) Vertical Boundaries. The vertical boundaries of the unit shall be:
 - (1) Exterior Boundaries. The interior plane of the outside concrete or block walls of the unit.
 - (2) Between Units. The interior plane of the concrete wall between the units.
 - (3) Between Units and Central Corridors or Between Units and Other Common Use Areas. The plane formed by the interior of the unit wall between the unit and said corridors or common use areas.

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

- (D) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the perimetrical boundaries shall extend to the interior unfinished surfaces of such apertures, and their frameworks thereof. Exterior surfaces made of glass or other transparent material and all framings, casings and hardware therefor, shall be included in the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the survey of the units set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of Sections 5.2(D) above shall control over the survey.

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE:

6.1. Shares of Ownership. The Condominium contains eighty-five (85) units. The owner of each unit shall also own a eighty-fifth (1/85) undivided share in the common elements and the common surplus.

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

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Second Amended and Restated Bylaws and Articles of Incorporation of the Association, attached hereto as Exhibits "D" and "E", respectively.

- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.
- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically, subject to the other provisions contained elsewhere herein.
- (E) Other appurtenances as may be provided in this Declaration and its exhibits.

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

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

6.4. Garages. Exhibit "B" (attached to the originally recorded Declaration) designates certain garages. Title to each garage is vested in various individual unit owners or the Association. Each garage is capable of being separately conveyed but any such conveyance shall be to another unit owner or the Association. No unit owner may acquire more than two (2) garages per unit owned. The maintenance, repair and replacement thereof shall be at the expense of the record owner of title as provided for in Section 11 of this Declaration.

6.5. Recreation Areas. The land which constitutes the "Common Recreation Area" legally described in Exhibit "B" (attached to the originally recorded Declaration) is owned by the Association for the use and benefit of the occupants of all one hundred and forty-one (141) units. The expense of the maintenance, repair and replacement of the recreation areas, and any improvements thereto, shall be the Association's responsibility..

7. COMMON ELEMENTS; EASEMENTS:

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

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

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- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.

7.2. Easements. Each of the following easements and easement rights is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

- (A) Utility and other Easements. The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the common elements or Association property, and to grant easements or relocate any existing easements in any portion of the common elements or Association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.
- (B) Encroachments. If for any reason other than the intentional act of the unit owner or the Association, any unit encroaches upon any of the common elements or upon any other unit, or any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (C) Ingress and Egress. A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.
- (D) Air Space. An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time, subject to the other provisions herein.

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

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and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the units.

8. LIMITED COMMON ELEMENTS:

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

- (A) Storage Lockers. Certain storage lockers have been designated as limited common elements. Each locker has been assigned to the exclusive use of a certain unit. No storage locker may be assigned to another unit except as provided by Section 8.2(A) hereof. The exterior surfaces of the lockers will be maintained by the Association and the cost shall be a common expense.
- (B) Parking Spaces. There have been designated, on the attached survey and plot plan, certain parking spaces as limited common elements. These parking spaces have been assigned to the exclusive use of specific units as identified in the survey and plot plan. The cost of maintenance of all parking spaces shall be a common expense.
- (C) Stairs. Any stairways, stairwells and railings which are attached to and which exclusively serve particular units are limited common elements for the exclusive use of the units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the owner of the unit.
- (D) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the owner of the unit.
- (E) Sun/Roof Decks. Exhibit "B" designates certain sun/roof decks. These sun/roof decks shall be limited common elements assigned for the exclusive use of the following units: A41, A42, A43, A44, A45, A46, A47, B41, B42, B43, B44, B45, B46, B47, C41, C42, C43, C44, C45, C46, C47 & F1. Routine maintenance of the sun/roof decks shall be the responsibility of the Association at the expense of the unit owner having the right to use same. At such time as the roof is to be replaced or substantially repaired, all costs associated with the removal, repair, or replacement of the limited common element sun/roof decks shall be treated as a common expense.
- (F) Privacy Fences. The following units have privacy fences which shall be for the exclusive use of the respective unit and shall be treated as Limited Common Elements: A1, A7, A41, A42, A43, A44, A45, A46, A47, B1, B7, B41, B42, B43, B44, B45, B46, B47, C1, C7, C41, C42, C43, C44, C45, C46, C47 & F1. The maintenance, repair and replacement of the privacy fences will be treated as

an expense of the unit owner to which it is appurtenant, with the exception of the maintenance, repair, and replacement of the privacy fence hardware which is used to attach the fences to the roof, which expense shall be treated as a common expense of the Association. If the Association determines it is necessary to remove the privacy fences at any time for the repair or replacement of the roof structure, then the removal and the reinstallation of the privacy fences shall be considered a common expense of the Association.

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

8.2. Exclusive Use; Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The right of exclusive use of each limited common element passes with the unit to which it is assigned, whether or not separately described, and cannot be separated from it; except that the use rights to a particular parking place or storage locker may be exchanged between units or transferred to another unit as follows:

- (A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors. If the Board approves the exchange, the owners involved shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration, and be executed by the Association and the owners with the formalities required for the execution of a deed.
- (B) The transfer of use rights shall be complete and effective when the Certificate is recorded in the Public Records of Lee County, Florida. The costs of preparing and recording the Certificate shall be borne by the unit owners desiring the exchange or transfer.

8.3. Maintenance, Repair and Replacement of Certain Limited Common Elements. The limited common elements described in Section 8.1 (C), (E), and (F) above are available only to certain units, and not to all units generally. The maintenance, repair and replacement of limited common elements shall be as set forth in Section 8.1 above.

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

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

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

9.3. Delegation of Management. The Association may contract for the management and maintenance of the Condominium property and employ a licensed manager or management company to

assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements with funds made available by the Association for such purposes. The Association and its officers however, shall retain at all times the powers and duties provided in the Condominium Act.

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

9.5. Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or these Condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6. Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association property. The Association may impose fees for the use of common elements or Association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium.

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

9.8. Purchase of Units. The Association has the power to purchase and acquire real and personal property, including one or more units in the Condominium, and to own, lease, mortgage, or convey same, such power to be exercised by the Board of Directors.

9.9. Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 9.8 above.

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

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

9.12. Member Approval of Certain Litigation. Notwithstanding any other provisions of the Condominium documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests present and voting at a meeting at which there is a quorum, prior to the

payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

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

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

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

10.2. **Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses of the Association in an amount equal to the following fraction: 1/141st

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

10.4. **Who is Liable for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 18.3 below as to certain first mortgagees, whenever title to a Condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which came due prior to the

transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

10.5. No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 18.3 below as to certain first mortgagees.

10.6. Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law (currently eighteen percent (18%) per annum), calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law (currently the greater of twenty-five dollars (\$25.00) or five percent (5%) of each installment of the assessment for each delinquent installment that payment is late). Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

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

10.8. Liens. The Association has a lien on each Condominium parcel securing payment of past due assessments, including interest and attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. Said lien cannot secure fines, charges or other fees. The lien is perfected upon recording a Claim of Lien in the Public Records of Lee County, Florida, stating the description of the Condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

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

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

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

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

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

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Rough plumbing.
- (C) All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (D) The exterior surface of the entrance doors to the units.
- (E) All exterior building walls.
- (F) The main water supply shut-off valves for units if not within the units.

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

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

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively.
- (H) Carpeting and other floor coverings.
- (I) Door and window hardware and locks.
- (J) Shower pans.
- (K) The main water supply shut-off valve for the unit if located in the unit.
- (L) Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.
- (M) All interior, partition walls which do not form part of the boundary of the unit.
- (N) All drywall, lath, plasterboard, furring and similar materials in the perimeter walls and ceilings of the unit.

11.3. Other Unit Owner Responsibilities:

- (A) Patios, Porches, Sun/Roof Decks, etc. Where a limited common element consists of a porch, patio, lanai, privacy fence area, sun/roof deck or roof area, the unit owner who has the right of exclusive use of the area shall be responsible for the maintenance, repair and replacement of the said limited common element, including any railings or fences and any fixed and/or sliding glass doors in said limited common element, if any, and except to the extent specifically provided in Section 8.1 above, notwithstanding any language contained within this entire Section 11 to the contrary; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs. No unit owner shall be permitted to place carpeting on any porch, patio, lanai, privacy fence area, sun/roof deck or roof area.

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- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (C) Garages. Each owner of a garage shall be responsible for the maintenance of its interior and its mechanical components and all expenses thereof. The exterior will be maintained, repaired and replaced by the Association but at the sole expense of the garage owner. No material alterations may be made to a garage without the consent and approval of the Board of Directors.
- (D) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.
- (E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and his successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other part of the Condominium property.

11.4. Appliance Maintenance Contracts. If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

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

11.6. Alterations and Additions to Common Elements and Association property. The protection, maintenance, repair, insurance and replacement of the common elements and Association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$50,000.00 in the aggregate in any

calendar year without prior approval of at least a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or Association property also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

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

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

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

11.10. Pest Control. The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either permit the Association's pest control

company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control service provided by the Association is part of the common expenses, the election of an owner not to use such service shall not reduce the owner's assessments.

11.11. Hurricane Shutters. The Board of Directors shall adopt hurricane shutter specifications for each building within the Condominium which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board.

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

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

12.2. Leasing of Units. There shall be no more than one (1) rental per seven (7) day period per unit. If a unit is leased, notice of that fact must be delivered to the Association's management company.

12.3. Occupancy. No person under the age of twenty-two (22) years shall lease any unit unless accompanied by an individual aged twenty-two (22) years or older. All occupants under twenty-two (22) years of age shall be closely supervised at all times by an individual aged twenty-two (22) or older to insure that they do not become a source of annoyance to other residents.

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

12.5. Nuisances. No owner shall use his unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential Condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with existing laws and the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.6. Signs. No person may post or display "For Sale" or "For Rent" or the identification of any business or other similar signs anywhere within the Condominium or on the Condominium property without the written consent of the Board.

12.7. Use of Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner. Balconies, patios, porches, walkways and stairways shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing, for outdoor cooking, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

12.8. Use of Common Elements and Association property. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term, except as otherwise may be required by law subject to regulation by the Board of Directors.

12.9. Regulation by Association. All of the provisions of the Condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Condominium documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

12.10. Fees and Deposits Related to the Lease of Units. Whenever herein the Board's approval is required to allow the lease of a unit, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law (currently \$100.00 per applicant with husband and wife or parent and child considered one applicant). No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require any deposits that are authorized by the Condominium Act as amended from time to time.

12.11. Transfer of Ownership of Units. All units and parcels of ownership are freely transferable subject only to those conditions contained in this Declaration.

12.12. Designation of Primary Occupant. Each owner of a unit which is owned by a corporation, partnership, trust, or other entity which is not a natural person or by co-owners other than husband and wife, shall designate a primary occupant in writing to the Association. If any unit owner fails to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

12.13 Number of Units. No owner may own or acquire title to more than a combined total of nine (9) units in Pointe Santo de Sanibel Condominium and Pointe Santo de Sanibel Condominium II. An owner owning more than nine (9) units on the effective date of this amendment may continue to own said units, but may not acquire any additional or different units by purchase or other means except exchange. For purpose of determining ownership of units, the constructive ownership rules of Section 318 of the Internal Revenue Code of 1954, as amended from time to time, shall govern.

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

13.1. By the Unit Owner. Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected

to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

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

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

- (A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.
- (B) Flood. In amounts deemed adequate by the Board of Directors, as available through the National Flood Insurance Program.
- (C) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- (D) Automobile. Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles, in such limits of protection and with such coverage as may be determined by the Board of Directors.
- (E) Workers' Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- (F) Statutory Fidelity Bond. The Association shall maintain a fidelity bond in an amount of not less than \$50,000.00 per director, officer, or employee having access to Association funds.

13.4. Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners.

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

13.6. Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association unit owners, or their respective servants, agents or guests, except for

any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

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

- (A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units in Pointe Santo de Sanibel Condominium and Pointe Santo de Sanibel Condominium II.
- (B) Units. Proceeds on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all one hundred and forty-one (141) units, less the deductible.
- (C) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except when the funds are not used for repairs or to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

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

- (A) Costs of Protecting and Preserving the Property. If a person other than the person responsible for repair and reconstruction has advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.
- (B) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the unit owners and their mortgagees, remittances being paid jointly to them.
- (C) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the unit owners and their mortgagees, remittances being payable jointly to them.

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

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

14.1. **Damage to Units.** Where loss or damage occurs within one or more units, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 13.7 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage unless legal impossibility precludes reconstruction and repair in which case the affected unit owners retain the proceeds.

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

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction or substitution therefor where legal impossibility prevents repair and reconstruction.
- (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements of either Pointe Santo de Sanibel or Pointe Santo de Sanibel Condominium II, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.
- (C) If reconstruction of the same number and general type of unit is not permitted by law, a membership meeting shall be called by the Board of Directors within sixty (60) days after the casualty. The Condominium shall continue at a reduced number of units unless two-thirds (2/3) of the entire voting interests of the Association shall vote for termination.

14.3. **"Very Substantial" Damage.** As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least two-thirds (2/3rds) of the units in Pointe Santo de Sanibel Condominium and two-thirds (2/3rds) of the units in Pointe Santo de Sanibel Condominium II cannot reasonably be rendered habitable within ninety (90) days. Should such "very substantial" damage occur then:

- (A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the Condominium property or Association property as might be reasonable under the circumstances to protect the Condominium property or Association property from further damage or

deterioration. This authority includes the authority to expend any and all available Association funds.

- (B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.
- (C) A membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the Association membership with reference to rebuilding or termination of the Condominium, subject to the following:
 - (1) If the insurance proceeds, reserves and other Association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished with a special assessment not exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.
 - (2) If reconstruction of the same number and general types of units is not permitted by law, or if the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying special assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then unless two-thirds (2/3rds) of the total voting interests vote in favor of any such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If the requisite number of unit owners approve reconstruction, the Board of Directors shall levy such assessments as are necessary and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and restoration of the property.
- (D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination approved by at least two-thirds (2/3rds) of the Board of Directors shall be conclusive, and shall be binding upon all unit owners.

14.4. Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and restoration come first from insurance proceeds; if there is a balance left in the insurance proceeds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners in Pointe Santo de Sanibel and Pointe Santo de Sanibel Condominium II, except as otherwise provided in Section 13.8(C) above.

14.5. Equitable Relief. In the event of damage to the common elements which renders any unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time,

the owner of the uninhabitable unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months after such six (6) month period.

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

15. CONDEMNATION:

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

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

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

15.4. 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, except as may otherwise be required by F.S. 73.073.

15.5. Units Reduced but Habitable. If the condemnation reduces the size of a unit and the remaining portion of the unit can be made habitable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) **Restoration of Unit.** The unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

- (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.
- (C) Adjustment of Shares in Common Elements. If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

15.6. Unit Made Not Habitable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Payment of Award. The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- (B) Addition to Common Elements. If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in a manner approved by the Board of Directors.
- (C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) Assessments. If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
- (E) Arbitration. If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. If there is a first mortgage, the first mortgagee shall have the right, but not the obligation, to appoint a third state certified appraiser to participate in this process. A judgment of specific performance upon the fair

market value calculated in this manner may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

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

15.8. Amendment of Declaration. Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration. Such amendment need be approved only by the owners of a majority of the units. Approval of or joinder by lien holders is not required for any such amendment.

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

16.1. Agreement. The Condominium may be terminated at any time by written agreement of the owners of at least eighty percent (80%) of the units, and the Primary Institutional Mortgagee.

16.2. Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 14.3, and it is not decided as therein provided that it will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

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

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

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

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

16.7. Provisions Survive Termination. The provisions of this Section 16 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

17. OBLIGATIONS OF OWNERS AND ENFORCEMENT:

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

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

17.2. Creation and Enforcement of Charges. The Association shall have a cause of action against unit owners to secure payment to the Association by unit 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.

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

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

17.5. No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under the law and the Condominium documents shall be cumulative, and the exercise of

any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

17.6. Notice of Lien or Suit. A unit owner shall give to the Association written notice of every lien (other than those relating to mortgages, taxes, or special assessments) on his unit within five (5) days after receiving actual notice of the attachment thereof.

18. RIGHTS OF MORTGAGEES:

18.1. Approvals. Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the unit's share of ownership of the common elements, except as otherwise provided in Sections 15.5(C), 15.6(C) and 15.8.

18.2. Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice, if such holder has previously requested such type of notice.

18.3. First Mortgage Foreclosure. If the mortgagee of a first mortgage of record acquires title to a Condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or assessments attributable to the Condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the first mortgagee is required to pay under the Condominium Act, as it may be amended from time to time. No acquirer of title to a Condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of such ownership.

18.4. Redemption. If proceedings are instituted to foreclose any mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with or without the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale, subject to the rights of the mortgagor. Any mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale.

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

18.6. Financial Statement. Any institutional mortgagee is entitled, upon written request, to a copy of the most recent financial report or financial statement of the Association.

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

- (A) Any sixty (60) day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.

- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association. An increase in coverage shall not be deemed a material modification under this paragraph, nor shall any change in coverage which is mandatory under the Condominium Act as amended from time to time.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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

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

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

19.3. **Vote Required.** Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed amendment is approved by at least two-thirds (2/3rds) of the entire voting interests either voting in person or by proxy at any annual or special meeting called for the purpose, or by consent.

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

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

19.6. **Enlargement of Common Elements.** The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through amendment of this Declaration. The amendment must be approved by at least two-thirds (2/3rds) of the voting interests, but no other person need join in or consent to the amendment. The amendment divests the Association of title and vests title in the unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the units.

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

20. MISCELLANEOUS:

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

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

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

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

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

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

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

20.8. Time Share Prohibited. No time share estates may be created in this Condominium.

IN WITNESS WHEREOF, the Association has executed this Second Amended and Restated Declaration of Condominium the day and year first above written.

Signed in the presence of:

POINTE SANTO DE SANIBEL
CONDOMINIUM ASSOCIATION, INC.

Sherry Romisher
Witness

By: John S. McGuire
John S. McGuire, President

Sherry Romisher
(Print Name)

(CORPORATE SEAL)

Rose Mary Mandujano
Witness

Rose Mary Mandujano
(Print Name)

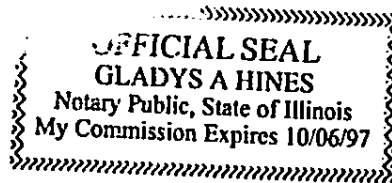
STATE OF ILLINOIS)
COUNTY OF Lake) §:

I hereby certify that on the 18th day of April, 1997, personally appeared before me John S. McGuire, President of Pointe Santo de Sanibel Condominium Association, Inc., a Florida corporation not for profit, who executed the foregoing certificate in the name and on behalf of said corporation. He is known to me or [] has produced _____ as identification, and did not take an oath.

Gladys A Hines
Notary Public

GLADYS A HINES
(Print Name)

My Commission Expires: 10/6/97





NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE AMENDED AND RESTATED BYLAWS. FOR PRESENT TEXT SEE EXISTING AMENDED AND RESTATED BYLAWS.

SECOND AMENDED AND RESTATED BYLAWS

OF

POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

OR2822 PG0727

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

1.1. Principal Office. The principal office of the Association is at 2445 West Gulf Drive, Sanibel, Florida 33957.

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

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

2. MEMBERS.

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

- (A) Delivery to the Association, if required, of a written designation of a primary occupant.
- (B) Recording in the Public Records of a Deed or other instrument evidencing legal title to the unit in the member.
- (C) Delivery to the Association of a copy of the recorded deed or other instrument evidencing title.

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

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a unit do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a unit is not a natural person, the vote of that unit shall be cast by the unit's primary occupant.

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

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

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

3. MEMBERS' MEETINGS; VOTING.

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

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

3.3. Notice of Members' Meetings. Notice of members' meetings, including a recall meeting and the annual meeting, which must include an identification of agenda items, must state the time, date, and place of the meeting, and shall be delivered or mailed to each unit owner by first class mail, unless waived in writing, at least fourteen (14) days prior to the meeting, provided, however, that any election at which one or more Directors are to be elected must be noticed as provided for in Section 4.3 below. An officer of the Association or the Manager shall execute an affidavit of mailing or delivery per F.S. 718.112(2)(d)(2) or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall also be posted in a conspicuous place on the Condominium property at least fourteen (14) continuous days prior to the annual meeting. The Board, upon notice to unit owners shall by duly adopted rule designate a specific location on the Condominium property upon which all notices of unit owner meetings shall be posted. If ownership of a unit is transferred after notice has been mailed, no separate notice to the new owner is required. Attendance at any members' meeting by a member constitutes waiver of notice by that member unless the member objects to the lack of notice at the beginning of the meeting.

3.4. **Quorum.** A quorum at members' meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast at least a majority of the votes of the entire membership.

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

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

3.7. **Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened without further notice at a specific later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance.

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

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

3.9. **Minutes and Inspection of Records.** Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a businesslike manner, shall be reduced to written form within thirty (30) days, and kept for a period of seven (7) years after the meeting. These minutes, plus records of all receipts and expenditures and all other official records, as defined in F.S. 718.111, except those which may be exempted by the Condominium Act and/or the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes from time to time, shall be available for inspection by unit owners and

Board members within five (5) working days after receipt of a written request by the Board or its designee. This provision shall be deemed to have been complied with by having a copy of the official records available for inspection or copying on the Condominium or Association property. Provided, however, that the Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

3.10. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The presiding officer may appoint a Parliamentarian whose decision on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11. Action by Members Without Meeting. Except for the holding of the annual meeting, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written ballots or other instruments indicating approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting, or majority of the total votes of the entire membership, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written expressions of approval are received by the Secretary within sixty (60) days after mailing notice of the proposed action to the members, a resolution passed by the Board of Directors on the action so authorized shall be of full force and effect as if the action had been approved by the vote of the members at a members meeting held on the date of the Board meeting. Any expression of approval not so received within such sixty (60) day period shall not be considered. Within ten (10) days after adopting the resolution, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph shall be construed in derogation of members' rights to call a special meeting of the membership, as provided in Section 3.2 above. If the vote is taken by the method described in this Section, the list of unit owners on record with the Secretary at the time of mailing the voting material shall be the list of qualified voters.

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

4.1. Number and Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be seven (7). In order to provide for a continuity of experience, the terms shall be staggered. All Directors shall be elected for two (2) year terms. A Director's term will end at the annual election at which his successor is to be duly elected, unless he sooner resigns or is recalled as provided in 4.5 below. Directors shall be elected by the members as described in Section 4.3 below, or in the case of a vacancy between annual elections, as provided in Section 4.4 below.

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

4.3. Elections. In each annual election the members shall elect by written ballot as many Directors as there are regular terms of Directors expiring, unless the balloting is dispensed with as provided for by law.

- (A) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any unit owner or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than thirty (30) days before the scheduled election the Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than thirty (35) days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall have no liability for its contents but shall not edit, alter, or otherwise modify the content of the information sheet. However, in order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper.
- (B) A voting machine may also be used by those attending the meeting in person, and a unit owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a member of the Board of Directors or other unit owner but no unit owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.
- (C) At least twenty percent (20%) of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.
- (D) An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.
- (E) In the event of a tie for a designated position of the Board, the tie shall be resolved by agreement of the candidates, if possible; otherwise, a runoff election shall be held in accordance with Rule 61B-23.0021, Florida Administrative Code.

4.4. Vacancies on the Board. If the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected as follows:

- (A) If a vacancy is caused by the death, disqualification or resignation of a Director, a majority of the remaining Directors, though less than a quorum, shall appoint a successor, who shall hold office until the next annual meeting. At the option of the Board, the successor may be elected by secret ballot of the members in a special election conducted in conjunction with a special meeting of the members, in which case the successor shall be elected to serve the entire remaining term.
- (B) If a vacancy occurs as a result of a recall pursuant to Section 4.5 and less than a majority of the Directors are removed, the vacancy may be filled by appointment by a majority of the remaining Directors, though less than a quorum, provided however, that a Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal. If vacancies occur as a result of a recall in which a majority or more of the Directors are removed, the vacancies shall be filled as provided by law.

OR2822 PG0732

4.5. Removal of Directors. Any or all Directors may be removed with or without cause by a majority vote of the entire membership, either by a written petition or at any meeting called for that purpose in the manner provided in the Condominium Act. If a meeting is held or a petition is filed for the removal of more than one Director, the question shall be determined separately as to each Director sought to be removed. If a special meeting is called by ten percent (10%) of the voting interests for the purpose of recall, the notice of the meeting must be accompanied by a dated copy of the signature list, stating the purpose of the signatures. The meeting must be held not less than ten (10) days nor more than sixty (60) days from the date when the notice of the recall meeting is mailed or delivered.

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

4.7. Other Meetings. Meetings of the Board may be held at such time and place in Lee County, Florida, as shall be determined from time to time by the President or a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone, facsimile machine, or telegram at least four (4) days prior to the day named for such meeting.

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

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

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

4.11. Vote Required. The acts approved by a majority of those Directors present and voting at a meeting at which a quorum exists shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the condominium documents or by applicable statutes. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of any action taken, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote or abstention of each Director present on each issue voted upon shall be recorded in the minutes. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

4.12. Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a specific time and date. At any reconvened meeting, provided a quorum is present, any business may be transacted that might have been transacted at the meeting originally as called.

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

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

4.15. Director conflicts of interest.

(1) Directors shall disclose conflicts of interest and any pecuniary or economic interest as to any matter under consideration by the Board.

(2) No contract or other transaction between the Association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, ratifies such contract or transaction, or because his or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consent of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the members entitled to vote on such contract or transaction, if any, and they authorize, approve, ratify it by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the Association at the time it is authorized by the board, a committee, or the members.

(3) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

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

OR2822 PG0734

4.17. **Emergency Powers.** The following shall apply to the extent not viewed to be in conflict with the Condominium Act:

- (A) In anticipation of or during any emergency defined in Paragraph (E) below, the Board of Directors of the Association may:
 - (1) Modify lines of succession to accommodate the incapacity of any Director, officer, employee or agent of the Association; and
 - (2) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.

- (B) During an emergency defined in Paragraph (E) below:
 - (1) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;
 - (2) One or more officers of the Association present at a meeting of the Board of Directors may be deemed to be Directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum; and
 - (3) The Director or Directors in attendance at a meeting shall constitute a quorum.

- (C) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association:
 - (1) Binds the Association; and
 - (2) May not be used to impose liability on a Director, officer, employee, or agent of the Association.

- (D) An officer, Director, or employee of the Association acting in accordance with any emergency Bylaws is only liable for willful misconduct.

- (E) An emergency exists for purposes of the Section if a quorum of the Association's Directors cannot readily be assembled because of some catastrophic event.

5. **OFFICERS.**

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

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

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

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

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

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

6.1. Depository. The Association shall maintain its funds in federally insured investment vehicles and accounts as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. Reserve and operating funds shall not be commingled for any purpose.

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

If the budget requires assessments against the owners which exceed 115% of the assessments for the proceeding year, the Board, upon written application of ten percent (10%) of the voting interests, shall call a special meeting of the unit owners within thirty (30) days, upon not less than ten (10) days' written notice to each unit owner. At the special meeting, unit owners shall consider and

enact a budget. The adoption of the budget shall require a vote of not less than a majority vote of the entire voting interests. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the Board of Directors shall go into effect as scheduled. In calculating whether assessments exceed 115% of the assessments for the previous year, the Board and unit owners shall exclude from the computation those amounts required to be excluded by law.

6.3. Statutory Reserves for Capital Expenditures and Deferred Maintenance. In addition to annual operating expenses, the proposed budget must include reserve accounts for capital expenditures and deferred maintenance as required by law. These accounts shall include, but are not limited to, roof replacement, building painting, pavement resurfacing, and any other item for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount to be reserved shall be computed by a formula based upon estimated life and replacement cost of each item. These reserves shall be fully funded unless the members subsequently determine at a duly called meeting by majority vote of the voting interests to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the unit owners as required in 6.2 above. Reserves funded under this paragraph, and all interest earned on such reserves, shall be used only for the purposes for which they were reserved, unless their use for other purposes is approved in advance by a majority of the voting interests present in person or by proxy and voting at a members' meeting called for the purpose.

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

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

6.6. Special Assessments. Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted, or non-recurring expenses. Special assessments are due on the day specified in the resolution of the Board approving such assessments. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in Section 4.8 above; and the notice to the owners that the assessment has been levied must contain a statement of the purpose(s) of the assessment. The funds collected must be spent for the stated purpose(s) or returned to the members as provided by law.

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

DR2822 PG0737

6.8. **Financial Reports.** A complete financial report of actual receipts and expenditures of the Association shall be made annually which shall comply with F.S. 718.111(13) or in lieu thereof (if required by Rule 61B-23.004, Florida Administrative Code) a complete set of financial statements. A copy of the report or the financial statements shall be furnished to each member within thirty (30) days after its completion and delivery to the Directors or at the annual meeting.

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

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

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

8. **COMPLIANCE AND DEFAULT; REMEDIES.** In addition to the remedies provided in Section 18 of the Declaration of Condominium, the following provisions shall apply:

8.1. **Fines.** The Board of Directors may levy fines against units whose owners commit violations of the Condominium Act, the provisions of the condominium documents or the rules and regulations, or condone such violations by their family members, guests or lessees. The fines shall be in an amount deemed necessary by the Board to deter future violations, but in no event shall any fine exceed the maximum amounts allowed by law (currently \$100.00 per violation), and no fine may be levied against an unoccupied unit. A fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed the maximum amount allowed by law (currently \$1,000.00). The procedure for imposing fines shall be as follows:

- (A) The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days, and the notice shall include:
 - (1) A statement of the date, time and place of the hearing;
 - (2) A specific designation of the provisions of the Declaration, Bylaws or rules which are alleged to have been violated; and,
 - (3) A short and plain statement of the specific facts giving rise to the alleged violation(s); and
 - (4) The amount of any proposed fine.

- (B) At the hearing the party against whom the fine may be levied shall have a reasonable opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved, and to review, challenge, and respond to any evidence or testimony by the Association. The hearing shall be conducted before a panel of three (3) unit owners appointed by the Board, none of whom may then be serving as Directors. If the committee, by majority vote, does not agree with the fine, it may not be levied.

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

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

9. CONTRACTS FOR PRODUCTS AND SERVICES; REQUIREMENTS. All contracts for the purchase, lease, or renting of materials or equipment or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment exceeding five percent (5%) of the total annual budget of the Association, including reserves, except for contracts with employees of the Association, and for attorneys, accountants, architects, engineering and landscape architects, the Association shall obtain 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. The Association need not accept the lowest bid. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time including the right of the Association to opt out of the requirements of this Paragraph.

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

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

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

10.3. Vote Required. Except as otherwise provided by law, or by specific provision of the condominium documents, a proposed amendment to these Bylaws shall be adopted if it is approved by concurrency of a majority of the entire voting interests, in person or by proxy, either at any annual or special meeting called for the purpose, provided that notice of the proposed amendment has been given to the members in accordance with law, or pursuant to Section 3.11 hereof.

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

DR2822 PG0739

11. **MISCELLANEOUS.**

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

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

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

11.4. **Fire Safety Compliance.** The Board of Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the units with the applicable Fire and Life Safety Code.

EXHIBIT
"E"

State of Florida



Department of State

OR2822 PG0740

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on May 2, 1997, for POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is 769963.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capitol, this the
Sixth day of May, 1997



Sandra B. Northam

Sandra B. Northam
Secretary of State

This instrument prepared by:
Christopher N. Davies, Esq.
CHRISTOPHER N. DAVIES, P.A.
12601 World Plaza Lane, Suite 2
Fort Myers, FL 33907

FILED
97 MAY -2 PM 1:59
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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CERTIFICATE OF AMENDMENT
SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION

OF

POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

THE UNDERSIGNED, being the duly elected and acting President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, does hereby make, subscribe, acknowledge and file with the Secretary of State this Second Amended and Restated Articles of Incorporation and certify that at a duly called meeting of not less than a majority of the voting interests ^{members} present in person or by proxy, held on January 25, 1997, where a quorum was present, after unanimous adoption of a resolution proposing said amendments by the Board of Directors, the Second Amended and Restated Articles of Incorporation were approved by the required vote to amend same.

The Articles of Incorporation of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., are, and shall hereby be, revised as the Second Amended and Restated Articles of Incorporation attached hereto as Exhibit "A" and by reference made a part hereof.

IN WITNESS WHEREOF, POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., has caused these Second Amended and Restated Articles of Incorporation to be executed in accordance with the authority hereinabove expressed this 18th day of April, 1997.

Dated: April 18, 1997

POINTE SANTO DE SANIBEL
CONDOMINIUM ASSOCIATION, INC.

Sherry Romisher
Witness

By: John S. McGuire
John S. McGuire President

Sherry Romisher
(Print Name)

(CORPORATE SEAL)

Rose Mary Manduyand
Witness

Rose Mary Manduyand
(Print Name)

STATE OF Illinois)

COUNTY OF Lake) §:

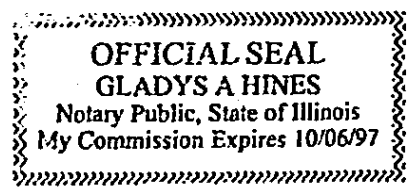
The foregoing instrument was acknowledged before me this 18th day of April, 1997, by John S. McGuire, President of POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the Association. Who is personally known to me or who produced _____

_____ (type of identification and who did (not) take an oath.

Gladys A Hines
Notary Public

GLADYS A. HINES
(Print Name)

My Commission Expires:



NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE AMENDED AND RESTATED ARTICLES OF INCORPORATION. FOR PRESENT TEXT SEE EXISTING AMENDED AND RESTATED ARTICLES OF INCORPORATION.

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
POINTE SANTO DE SANIBEL CONDOMINIUM ASSOCIATION, INC.

Pursuant to Section 617.1007, Florida Statutes, the Amended and Restated Articles of Incorporation of Pointe Santo de Sanibel Condominium Association, Inc., a Florida not-for-profit corporation, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1007, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Second Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.1007 and the omission of matters of historical interest. The Second Amended and Restated Articles of Incorporation of Pointe Santo de Sanibel Condominium Association, Inc., shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation, herein called the "Association," is Pointe Santo de Sanibel Condominium Association, Inc., and its address is 2445 West Gulf Drive, Sanibel, Florida 33957.

ARTICLE II

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act for the operation of Pointe Santo de Sanibel Condominium, a Condominium, located in Lee County, Florida.

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

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

- (D) To reconstruct improvements after casualty and to make further improvements of the condominium property.
- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, limited common elements and units in the operation of the Association.
- (F) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (G) To contract for the management and maintenance of the condominium and the condominium property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration of Condominium to be exercised by the Board of Directors or the membership of the Association.
- (H) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (I) To own or lease real property, and to enter into agreements, or acquire leaseholds, memberships, and other possessory, ownership or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.
- (J) To borrow money if necessary to perform its other functions hereunder.

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

ARTICLE III

MEMBERSHIP:

- (A) The members of the Association shall be the record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.
- (B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.
- (C) The owners of each unit, collectively, shall be entitled to one (1) vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE IV

TERM: The term of the Association shall be perpetual.

ARTICLE V

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

ARTICLE VI

DIRECTORS AND OFFICERS:

- (A) The affairs of the Association shall be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws.
- (B) Directors of the Association shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.
- (C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VII

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

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by written petition, signed by at least one-fourth (1/4th) of the voting interests.
- (B) Procedure. Upon any amendment to these Articles being proposed by said Board or unit owners, such proposed amendment shall be submitted to a vote of the owners not later than the next annual meeting for which proper notice can be given.
- (C) Vote Required. Except as otherwise provided for by Florida law, these Articles of Incorporation may be amended by concurrence of a majority of the entire voting interests at any annual or special meeting, provided that notice of any proposed amendment has been given to the members of the Association, and that the notice contains a copy of the proposed amendment.
- (D) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lee County, Florida.

ARTICLE VIII

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorney's fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The rights to indemnification shall also not apply to:

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

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

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