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Retd:
CHERYL R KRAUS
1100 FIFTH AVE S #201
NAPLES FL 33940

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly elected President of RIVER POINTE MARINA, INC. *1/w/a* BEAUMER BAY CLUB CONDOMINIUM ASSOCIATION, INC., a Florida corporation not-for-profit, does hereby certify that the following resolutions were duly proposed and approved by the entire Board of Directors, considered at and approved by greater than two-thirds (2/3) of the votes of the entire membership of the Association at Annual Members' Meeting held on the 22rd day of May, 1996, after due notice, for the purpose of amending the Declaration of Condominium of BeauMer Bay Club, a Condominium, and the Articles of Incorporation and Bylaws of BeauMer Bay Club Condominium Association, Inc. as originally recorded in O.R. Book 1097, at Pages 1199 *et seq*, Public Records of Collier County, Florida.

RESOLVED: That the Declaration of Condominium of BeauMer Bay Club, a Condominium, be and is hereby amended and restated, and that the Amended and Restated Declaration of Condominium is adopted in the form attached hereto and made a part hereof.

RESOLVED: That the Articles of Incorporation of River Pointe Marina, Inc. *1/w/a* BeauMer Bay Club Condominium Association, Inc., be and are hereby amended and restated, and that the Amended and Restated Articles of Incorporation are adopted in the form attached as Exhibit "A" to the Declaration of Condominium and made a part hereof.

RESOLVED: That the Bylaws of River Pointe Marina, Inc. *1/w/a* BeauMer Bay Club Condominium Association, Inc., be and are hereby amended and restated, and that the Amended and Restated Bylaws are adopted in the form attached as Exhibit "B" to the Declaration of Condominium and made a part hereof.

May 24, 1996
Date

RIVER POINTE MARINA, INC.
(*1/w/a* BEAUMER BAY CLUB
CONDOMINIUM ASSOCIATION, INC.)

Witnesses:
[Signature]

Signature of Witness
G. KEVIN SMITH
Print name of Witness

[Signature]
Signature of Witness
R. KERASOTES
Print name of Witness

By: [Signature]
Gary Martin, President

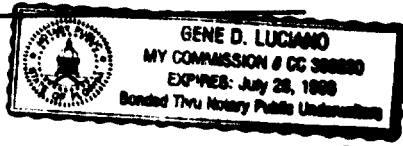
811 River Pointe Drive
Naples, Florida 33940

(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

Subscribed to before me this 24 day of May, 1996, by Gary Martin, President of RIVER POINTE MARINA, INC. *1/w/a* BEAUMER BAY CLUB CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, on behalf of the corporation. He is personally known to me and did not take an oath.

[Signature]
Notary Public (SEAL)
Print name: Gene D. Luciano
My Commission Expires:



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

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

BEAUMER BAY CLUB, A CONDOMINIUM

On August 20, 1984, the original Declaration of Condominium of BeauMer Bay Club, a Condominium (hereinafter the "Condominium") was recorded in Official Record Book 1097, at Page 1196 et seq., of the Public Records of Collier County, Florida. That Declaration of Condominium, as it has previously been amended, is hereby further amended in part and is restated in its entirety.

1. SUBMISSION TO CONDOMINIUM OWNERSHIP: This Amended and Restated Declaration of Condominium is made by River Pointe Marina, Inc., formerly known as BeauMer Bay Club 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 BeauMer Bay Club, a Condominium, and its street address is 811 River Pointe Drive, Naples, Florida 33940.

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 "DC-1" to the original Declaration, which Exhibit is hereby incorporated by reference. The land identified a Parcel Three on Exhibit DC-1 is submerged land within the boat basin and therefore the submissions of such land to the condominium form of ownership by the original Declaration is subject to the rights and claims of the State of Florida, the United States Government or the public as set forth herein. Also submitted to the condominium form of ownership by this instrument are all easement rights of record appurtenant to the ownership of the land as described in Exhibit DC-1 specifically including, but not limited to, the following:

- (A) All such easement rights contained in the Declaration of Easement Rights, Reservation and Obligations dated September 30, 1982, and recorded in Official Records Book 989, pages 581 through 592, Public Records of Collier County, Florida.

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- (B) The easement rights reserved for the benefit of the land described in DC-1 by that certain Easement Reservation contained in a deed recorded in OR Book 1084, page 1831, Public Records of Collier County, Florida; which reserves an easement for parking and access on the property described in Exhibit DC-4 and an easement for access on the property described on Exhibit DC-5.

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

4.2 "**Association**" means River Pointe Marina, Inc. f/k/a BeauMer Bay Club Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

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

4.4 "**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".

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

4.6 "**Fixtures**" means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to rope cleats, plumbing and electrical fixtures.

4.7 "**Guest**" means any person who is not the unit owner or a tenant who owns or controls a vessel that occupies the unit on a temporary basis at the invitation of the owner, without the payment of consideration.

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

4.9 "**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. There are no limited common elements in this condominium.

4.10 "**Occupy**", when used in connection with a unit, means the act of keeping a vessel overnight in a unit. "**Occupant**" is a person who owns or is primarily responsible for the vessel being kept in a unit.

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

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4.13 "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.

4.14 "Tenant" means any person who is not the unit owner or a tenant who owns a vessel that occupies the unit on a temporary basis at the invitation of the owner, with the payment of consideration.

4.15 "Utility Services" includes, but is not limited to, electric power, gas, hot and cold water, heating, garbage and sewage disposal.

4.16 "Unit" has the same meaning as the term "unit" as defined in the Condominium Act.

4.17 "Unit 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.

4.18 "Vessel" means and refers to a leisure or recreational motorboat, sailboat or watercraft which is self propelled and in seaworthy condition, together with any dinghy or other boat kept thereon. Houseboats, floating homes, house-like barges, seaplanes, airboats, hovercraft, charter or commercial boats are not considered vessels for the purpose of this Declaration and shall not be permitted within the condominium.

4.19 "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 sixty-three (63) units, so the total number of voting interests is sixty-three (63) votes.

5. DESCRIPTION OF IMPROVEMENTS, SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached to the original Declaration as Exhibit "DC-2", 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. Together with this Declaration, the exhibit is in sufficient detail to identify each unit and the common elements and their relative locations and dimensions.

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

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the horizontal plane of the top and bottom respectively of the portion of the dock facilities forming the individual unit.
- (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes bounding the unit as shown in Exhibit "DC-2" hereto, extended to their intersections with each other and with the upper and lower boundaries.

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All pipes, ducts, vents, wires, conduits or other equipment or fixtures running through the dock facilities for furnishing utility services are not included within the unit. In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "DC-2" hereto shall control in determining the boundaries of a unit, except the provisions of 5.2(D) above shall control over Exhibit "DC-2". Nothing herein shall be construed as purporting to change the boundaries of the units as they were provided for in the original Declaration.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Shares of Ownership. The Condominium contains sixty-three (63) units. The owner of each unit shall also own a one sixty-third (1/63) undivided share in the common elements and the common surplus.

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

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Amended and Restated Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "A" and "B", respectively.
- (C) The exclusive 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.
- (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 for the sole purpose of mooring a vessel therein. He is entitled to use the common elements in accordance with the purposes for which they are intended, but no use of the unit or of the common elements may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be subdivided. The use of the units and the 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.

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.

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- (B) All portions of the boat docks and other improvements located outside the units.
- (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 the docks.
- (E) The fixtures and installations required for access and utility services to more than one unit or to the common elements.

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

- (A) **Utility and other Easements.** The Association has the power, without the joinder of any unit owner, to grant, modify or move easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements or association property, and to grant access easements or relocate any existing access easements in any portion of the common elements or association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.
- (B) **Encroachments.** If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (C) **Ingress and Egress.** A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.
- (D) **Access and Parking Easement Rights.** Each of the individual unit owners has as an appurtenance to the unit the following nonexclusive rights of easements:

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- (1) A right of ingress and egress over and across a portion of the adjacent residential condominium parcel as described on attached Exhibit "DC-3", and as more particularly delineated in the Declaration of Easement Rights, Reservations and Obligations recorded in Official Records Book 989, pages 581 through 592 inclusive, Public Records of Collier County, Florida.
- (2) A right of ingress and egress over and across the area described on attached Exhibit "DC-5" all as more particularly delineated in the Deed recorded in OR Book 1084, page 1831, Public Records of Collier County, Florida.
- (3) A right to park as available, in any of the six parking spaces located on the property described on attached Exhibit "DC-4", together with, for access to such parking spaces, a right of easement for ingress and egress over and across all of the property described on said Exhibit "DC-4".
- (E) **Easement Restraints.** The property submitted to the condominium form of ownership by this Declaration is subject to certain easement rights of owners of the adjacent condominium and commercial parcels for seawall maintenance access, all as more particularly set forth in the Declaration of Easement Rights, Reservations and Obligations dated September 30, 1982, and recorded in Official Records Book 984, page 581 through 592, inclusive, Public Records of Collier County, Florida.
- (F) **Submerged Land Restraints.** The property described on Parcel Three of DC-1, being submerged land within the boat basin, is subject to the following:
- (1) Any and all rights of the United States Government to such land in the interest of navigation and commerce or by virtue of the fact that the land is submerged under navigable waters.
- (2) Any and all rights of the State of Florida arising by virtue of the fact that the property consists of submerged land in tidal waters.
- (3) Any riparian or littoral rights possessed by others.
- (G) The Board of Directors may modify the easements affecting the condominium property, if and when necessary.

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. ASSOCIATION: The operation of the Condominium is by River Pointe Marina, Inc. f/k/a BeauMer Bay Club Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

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

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

8.3 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.

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

8.5 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.

8.6 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.

8.7 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.

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

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

8.10 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 Sections 9.8 and 9.9 above.

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

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

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

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

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

9.3 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.

9.4 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 17.3 below as to certain first mortgagees, whenever title to a condominium parcel is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and 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.

9.5 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 17.3 below as to certain first mortgagees.

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9.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before fifteen (15) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date 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, then to any charges levied against the unit pursuant to Section 16.2 below, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

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

9.8 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. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

9.9 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.

9.10 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.

9.11 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.

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10. 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:

10.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all condominium and association property. The cost is a common expense.

10.2 Unit Owner Maintenance. 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, boat 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.

10.3 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 materially change the exterior appearance of any portion of the Condominium.

10.4 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 \$3,000 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.

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

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10.6 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.

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

11.1 Units. Only one vessel shall be kept in a unit. Only a leisure or recreational motorboat, sailboat or watercraft which is self propelled and in seaworthy condition, together with any dinghy or other boat kept thereon, shall be permitted to occupy any unit at the condominium at any time. No floating homes, house-like barges, seaplanes, airboats, hovercraft, charter or commercial vessels shall be permitted within the condominium. No business or commercial activity shall be conducted in or from any unit. No dry storage or dry docking of vessels shall be permitted, including installation of any hydraulic lifts. In the event that any dispute as to whether a particular vessel or boat is permitted to be kept or otherwise operated at the condominium, the determination of the Board of Directors of the Association made at its sole discretion shall be dispositive.

11.2 Length of Vessels. The maximum length of vessels moored in units at the condominium shall be as follows:

- (A) Vessels moored in a twenty-four foot (24') slip shall not exceed twenty-eight feet length water line (28' LWL).
- (B) Vessels moored in a twenty-eight foot (28') slip shall not exceed thirty-four feet length water line (34' LWL).
- (A) Vessels moored in a forty-eight foot (48') slip shall not exceed forty-four feet length water line (44' LWL).

11.3 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 marina condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each unit shall be consistent with all existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

11.4 Safety. No open fires shall be permitted on any vessel. No refueling of vessels or storage of petroleum products shall be allowed on the condominium property. No unit shall be used in any manner that in the Board's sole discretion creates a safety hazard to the condominium property, any vessel moored therein or the occupants of any unit.

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11.5 Use of Common Elements. Common walkways, docks and other common elements shall not be obstructed, littered, defaced or misused in any manner. Walkways and docks shall be used only for the purposes intended, and they shall not be used for hanging or drying clothing or for storage of bicycles or other personal property.

12. 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:

12.1 By the Unit Owner. Each unit owner may at his own expense insure against damage to his own unit and the personal property therein, personal liability for injury to and death of persons and loss of personal property of others provided that the insurer waives its rights of subrogation as to any claim or claims against other unit owners, the Association, and their respective employees, agents, guests and invitees.

12.2 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.

12.3 Required Coverage. The Association shall maintain adequate insurance covering all of the improvements 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) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the unit owners as a group to a unit owner.
- (C) **Statutory Fidelity Bond.**

12.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners. Some of the more common options include, but are not limited to, flood insurance, worker's compensation, broad form comprehensive general liability endorsement, directors and officers liability.

12.5 Description of Coverage. A detailed summary of the coverage 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.

12.6 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.

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

- (A) **Common Elements.** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
- (B) **Units.** Proceeds on account of damage within the units shall be held in undivided shares based on the prorated amount of damage within each damaged unit as a percentage of the total damage within all units.
- (C) **Mortgages.** 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 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.

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

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

12.9 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.

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

13.1 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:

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- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.
- (B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in proportion to their shares in the common elements for the deficiency. The proceeds from the special assessment shall be added to the funds available for repair and restoration of the property.

13.2 "Very Substantial" Damage. As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby three-fourths (3/4) or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur then:

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

13.3 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration are from insurance proceeds; if there is a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 12.7(C) above.

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

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

14. CONDEMNATION:

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

14.2 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.

14.3 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.

14.4 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.

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

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- (A) Restoration of Unit. The dock configuration shall be reconstructed to maximize the dockage area of the reduced unit, so long as no other unit is adversely affected, unless written consent to the proposed reconstruction is obtained from the owner of the affected unit or units. 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 dock 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 total dockage 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.

14.6 Unit Made Not Usable. If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be used for dockage, 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.

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- (E) **Arbitration.** If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one certified real property appraiser, who shall appraise the unit and determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the fair market value calculated in this way may be entered in any court of competent jurisdiction. Each party shall bear the cost of his own appraiser.

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

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

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

15.1 Agreement. The Condominium may be caused to be terminated at any time by written agreement of the owners of at least three-fourths (3/4) of the units.

15.2 "Very Substantial Damage." If the condominium suffers "very substantial damage" to the extent defined in Section 14.3 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

15.3 Certificate of Termination; Termination Trustee. The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice President with the formalities of a deed, and certifying as to the facts effecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Trustee, and shall be signed by the Trustee indicating willingness to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section 15 is recorded in the Public Records of Collier County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the condominium property or association property, without need for further conveyance. Beneficial title to the former condominium and association property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority. Termination incident to a merger of this Condominium with another shall not require designation of a Termination Trustee.

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15.4 Wind-up of Association Affairs. The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws, including the power to levy assessments, for the purpose of maintaining and protecting the property and winding up the affairs of the Association in accordance with this Section.

15.5 Trustee's Powers and Duties. The Termination Trustee shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Declaration. The Termination Trustee shall also have the power and authority to liquidate the assets of the Association upon its dissolution, and to distribute the proceeds as described herein. The Termination Trustee shall be entitled to charge a reasonable fee for acting in such capacity, and such fee, and all costs and expenses incurred by the Termination Trustee in the performance of its duties, shall be paid by the Association or taken from the proceeds of the sale of the former condominium and association property, and shall constitute a lien on the property superior to any other lien until paid. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting a Termination Trustee, unless such liabilities are the result of gross negligence or intentional wrongdoing. The Termination Trustee may rely upon written instructions and information provided by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.

15.6 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, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. 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. If the unit owners have not authorized a sale of the former condominium and association property within one year after the recording of the Certificate of Termination, the Trustee may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale of any of the property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

15.7 Provisions Survive Termination. The provisions of this Section 15 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former condominium property, are common expenses, the payment of which is secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

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16. ENFORCEMENT:

16.1 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.

16.2 Removal of Vessel. The Association may cause the removal any vessel moored at the condominium in violation of the provisions of this Declaration. Prior to such removal, the Board shall notify the unit owner of the violation in writing, by certified mail or personal delivery, and such unit owner shall have five (5) days from the date of the unit owners receipt of the notice or ten (10) days from the date that the notice is posted, whichever is sooner, to cure the violation. If the violation is not cured by that date, the Board of Directors may cause the vessel to be removed and placed in dry storage. The removal and storage of the vessel shall be at the expense of the unit owner and shall be charged against the unit. Failure of the unit owner to pay such expenses shall result in a lien against the unit and may be collected and foreclosed in the manner provided in Section 9 above, including the imposition of interest, late payment fees, and attorney fees and costs.

16.3 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.

16.4 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. Except that, the Association is precluded from recovering attorney's fees and costs resulting from a legal proceeding involving matters that were the subject of a written complaint that the unit owner filed with the Board by certified mail if the Board did not substantively respond to such complaint in a timely manner as required by law.

16.5 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.

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17. RIGHTS OF MORTGAGEES:

17.1 Approvals. Written consent of the first 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 14.5(C) and 14.6(C).

17.2 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.

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

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

17.5 Right to Inspect Books. The Association shall make available to 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.

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

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

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

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

18.1 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 (1/4) of the units.

18.2 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.

18.3 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 (2/3) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting following the procedure set forth in Section 3.12 of the Bylaws.

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

18.5 Proviso. No amendment may change the boundaries or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless all record owners of the unit, and all record owners of mortgages on such unit, consent in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 14. No amendment shall operate to unlawfully discriminate against any unit owner nor against any class of unit owners.

18.6 Enlargement of Common Elements. The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through amendment of Exhibits "DC-1" and "DC-2" to this Declaration. The amendment must be approved by the procedure set forth in Section 18.5 above. The amendment divests the Association of title and vests title in the unit owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the units.

18.7 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.

19. MISCELLANEOUS

19.1 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.

19.2 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.

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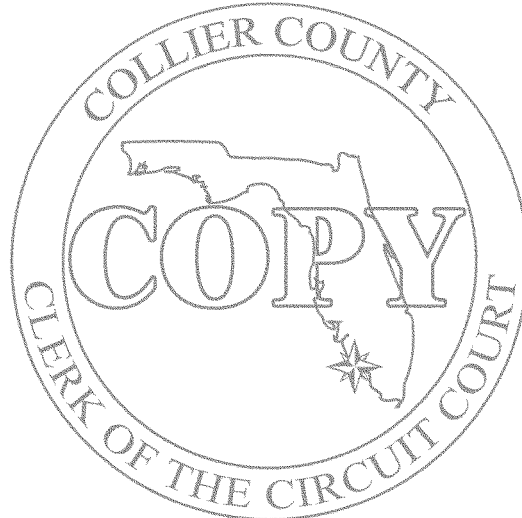
19.3 Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.

19.4 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.

19.5 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.

19.6 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.

19.7 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.



DECLARATION

-22-

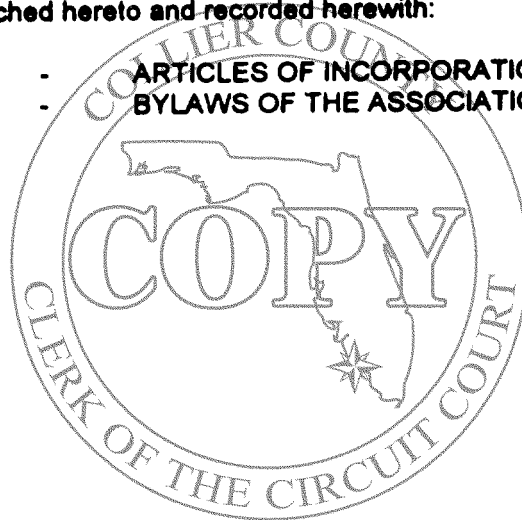
EXHIBITS TO DECLARATION

The following exhibits were recorded on August 20, 1984, together with the Declaration of Condominium of BeauMer Bay Club, a Condominium, by Declaration created on the same date, at O.R. Book 1097, Page 1196 et seq., Public Records of Collier County, Florida. These exhibits, as previously amended to date, are hereby incorporated by reference as exhibits to the attached Amended and Restated Declaration of Condominium.

- EXHIBIT "DC-1" - LEGAL DESCRIPTION OF CONDOMINIUM PROPERTY
- EXHIBIT "DC-2" - SURVEY OF IMPROVEMENTS ON CONDOMINIUM PROPERTY
- EXHIBIT "DC-3" - LEGAL DESCRIPTION OF "EASEMENT PARCEL ONE"
- EXHIBIT "DC-4" - LEGAL DESCRIPTION OF "PARCEL ONE"
- EXHIBIT "DC-5" - LEGAL DESCRIPTION OF EASEMENT FOR "ACCESS FOR INGRESS AND EGRESS OVER ADJACENT COMMERCIAL PROPERTY"

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

- EXHIBIT "A" - ARTICLES OF INCORPORATION OF ASSOCIATION
- EXHIBIT "B" - BYLAWS OF THE ASSOCIATION





FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

May 31, 1996

CSC NETWORKS
DANIEL
TALLAHASSEE, FL

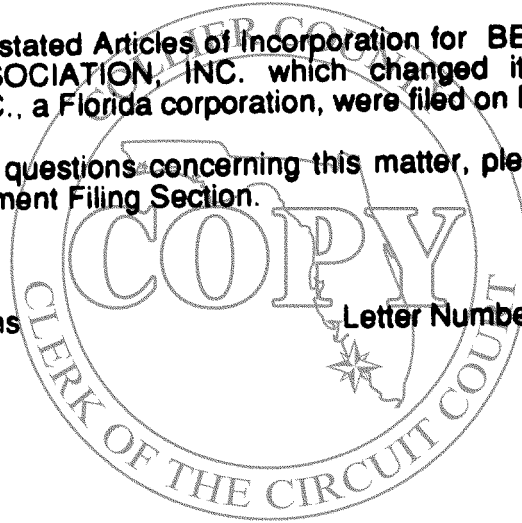
Re: Document Number N04543

The Amended and Restated Articles of Incorporation for BEAUMER BAY CLUB CONDOMINIUM ASSOCIATION, INC. which changed its name to RIVER POINTE MARINA, INC., a Florida corporation, were filed on May 30, 1996.

Should you have any questions concerning this matter, please telephone (904) 487-6050, the Amendment Filing Section.

Joy Moon-French
Corporate Specialist
Division of Corporations

Letter Number: 496A00027283



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

SECRETARY OF STATE
TALLAHASSEE, FLORIDA
MAY 30 PM 2:11

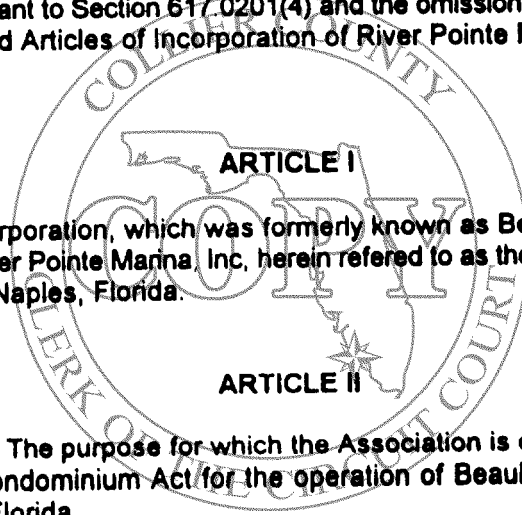
AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

RIVER POINTE MARINA, INC.

(formerly known as BEAUMER BAY CLUB CONDOMINIUM ASSOCIATION, INC.)

Pursuant to Section 617.0201(4), Florida Statutes, the Articles of Incorporation of River Pointe Marina, Inc., a Florida corporation not for profit, which was originally incorporated under the name BeauMer Bay Club Condominium Association, Inc. on August 3, 1984 are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.0201(4), Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.0201(4) and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of River Pointe Marina, Inc. shall henceforth be as follows:



ARTICLE I

NAME: The name of the corporation, which was formerly known as BeauMer Bay Club Condominium Association, Inc., is now River Pointe Marina Inc, herein referred to as the "Association", and its address is 811 River Pointe Drive, Naples, Florida.

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 BeauMer Bay Club, a Condominium, located in Collier County, Florida.

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

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

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

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

ARTICLE III

MEMBERSHIP:

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

ARTICLE IV

TERM: The term of the Association shall be perpetual.

ARTICLE V

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

ARTICLE VI

DIRECTORS AND OFFICERS:

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

ARTICLE VII

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

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

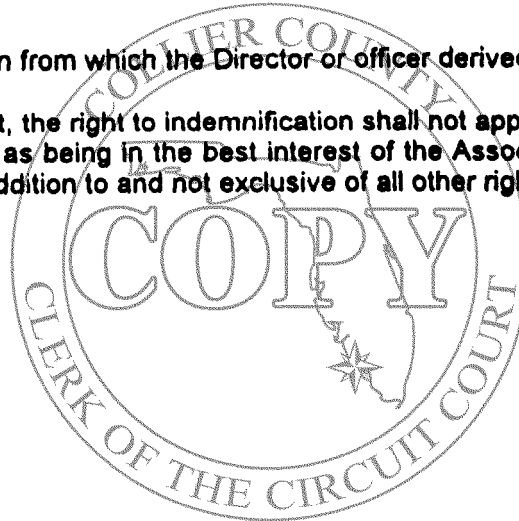
- (D) **Effective Date.** An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

ARTICLE 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 attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgement or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

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

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



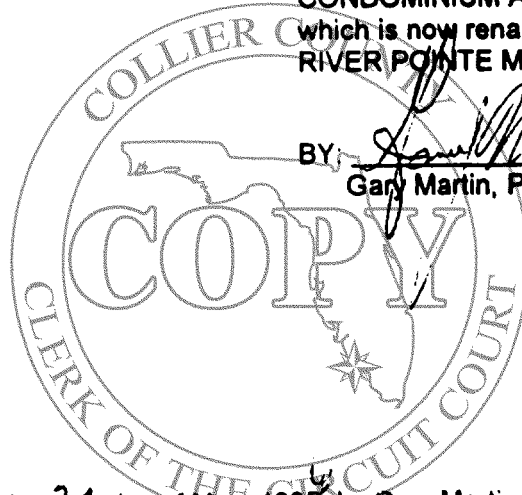
CERTIFICATE

The undersigned, being the duly elected and acting President of BEAUMER BAY CLUB CONDOMINIUM ASSOCIATION, INC. (Charter Number N04543) which is now renamed as RIVER POINTE MARINA, INC., hereby certifies that the foregoing were duly proposed by the entire membership of the Board of Directors and were approved by at least two-thirds (2/3) of the votes of the entire membership of the Association at the Annual Members' Meeting held on the 22rd day of May, 1996, where a quorum was present, after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment, said vote being sufficient for their amendment. The foregoing both amends and restates the Articles of Incorporation in their entirety.

Executed this 24 day of May, 1996.

BEAUMER BAY CLUB
CONDOMINIUM ASSOCIATION, INC.
which is now renamed as
RIVER POINTE MARINA, INC.

BY: [Signature]
Gary Martin, President

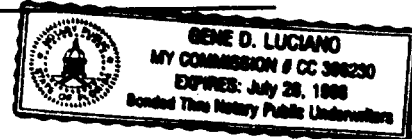


(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

Subscribed to before me this 24 day of May, 1996, by Gary Martin, President of BEAUMER BAY CLUB CONDOMINIUM ASSOCIATION, INC. which is now renamed as RIVER POINTE MARINA, INC., a Florida corporation not for profit, on behalf of the corporation. He is personally known to me and did not take an oath.

[Signature: Gene D. Luciano]
Notary Public
Print name: Gene D. Luciano
My Commission Expires: _____
(SEAL)



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

AMENDED AND RESTATED BYLAWS

OF

RIVER POINTE MARINA, INC.

1. GENERAL. These are the Amended and Restated Bylaws of River Pointe Marina, Inc. f/w/a BeauMer Bay Club Condominium Association, Inc., hereinafter referred to as 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 811 River Pointe Drive, Naples, Florida 33940.

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

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

BYLAWS

Exhibit "B"

-1-

2.2 Voting Interests. The members of the Association are entitled to one (1) vote for each unit owned by them. The total number of possible votes (the "voting interests") is equal to the total number of units. The vote of a unit is not divisible. The right to vote may not be denied because of delinquent assessments. The right to vote shall be established as follows:

- (A) If a unit is owned by one natural person, his right to vote shall be established by the record title to the unit.
- (B) 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.
- (C) If the owner of a unit is not a natural person, the owner of the unit shall designate a primary occupant of the unit who shall be a natural person and the vote of that unit shall be cast by the unit's primary occupant.
- (D) If the unit is subject to an agreement for deed, the purchaser in possession shall have the right to vote as provided for in this section 2.2 (A) - (C) as may apply.

2.3 Approval or Disapproval of Matters. Whenever the vote of the membership is required upon any matter, whether or not the subject of an Association meeting, the manner in which the vote may be cast shall be determined by the person authorized to vote in Section 2.2 above, unless the joinder of all record owners is specifically required.

2.4 Change of Membership. Upon a new unit owner's membership becoming effective as provided in 2.1 above, the prior owner's membership shall automatically terminate.

2.5 Termination of Membership. Any liability or obligation of a member which arose out of or was in any way connected with ownership of a unit or membership in the Association shall survive termination of such ownership and membership.

3. MEMBERS' MEETINGS: VOTING.

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

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

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

3.4 Notice of Annual Meeting: Special Requirements. Notice of the annual meeting together with an agenda shall be posted in a conspicuous place on the condominium property or association property for at least fourteen (14) continuous days prior to the annual meeting. The notice and agenda for the annual meeting shall also be sent by first class mail to each owner regardless of whether the second notice of election described in Section 4.3(B) below is required, and an affidavit of the officer or other person making such mailing shall be retained in the Association records as proof of mailing. Notice of the annual meeting may, alternatively, be delivered in person if a written waiver of mailing is obtained.

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

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

3.7 Proxy Voting. Unless otherwise provided by law, any person entitled to attend and vote at a members' meeting may establish his presence and cast his vote by a limited or general proxy. A proxy may be given by any person entitled to vote, but shall be valid only for the meeting for which it was originally given and any lawful adjournment of that meeting. No proxy is valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to vote for the unit, specify the date, time and place of the meeting for which it is given, and the original must be delivered to the Association at or before the appointed time of the meeting or lawfully adjourned and reconvened meeting thereof. Proxyholders must be members. No proxy shall be valid if it names more than one proxyholder, but the proxyholder shall have the right, if the proxy so provides, to substitute another person to hold the proxy.

3.8 Adjourned Meetings. Any duly called members' meeting may be adjourned and reconvened at a 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 be conducted at the reconvened meeting.

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

- (A) Call of the roll and determination of quorum.
- (B) Reading or disposal of minutes of previous members' meeting

- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

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

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

3.12 Action by Members Without Meeting. Except for the holding of the annual meeting, any action required or permitted to be taken at a members' meeting may be taken by mail without a meeting if written consents or other instruments indicating approval of the proposed action are dated, 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 voting interests, whichever is greater, unless a lesser vote is sufficient by law. If the requisite number of written consents is received by the Association 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. 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 affairs of the Association shall be administered by a Board of Directors. All powers and duties granted to the Association by law, together with the condominium documents, shall be exercised by the Board, subject to approval or consent of the members 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 three (3). All Directors shall be elected for a one (1) year term. 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, as provided in 4.4 below.

4.2 Qualifications. Each Director must be a member, the spouse of a member, a primary occupant or the spouse of a primary occupant.

4.3 Annual Elections. The membership shall by closed ballot elect as many Directors as there are regular terms of Directors expiring. Nominations for election to the Board of Directors shall be made from the floor at the meeting. Any eligible person may nominate himself or may be nominated by another member or the nominating committee, if any. If the number of candidates is less than or equal to the number of Director vacancies, then balloting shall not be required. If balloting is required, Directors shall be elected by a plurality of the votes cast at the annual meeting. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected. No owner of any unit may cast more than one vote for any person nominated as a Director, it being the intent hereof that voting for directors shall be non-cumulative. The candidates receiving the highest number of votes shall be declared elected, except that a run-off election shall be held in the event of a tie vote.

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 for the remaining unexpired term.
- (B) A vacancy occurring as a result of a recall in which less than a majority of the Directors are recalled and removed, the vacancy(ies) may be filled by the affirmative vote of a majority of the remaining Directors, even if the remaining Directors constitute less than a quorum. No recalled Director shall be appointed by the Board to fill a vacancy. Alternatively, the Board may, by affirmative vote of a majority of the remaining Directors, even if less than a quorum remain, call and conduct an election in the manner prescribed by law to fill the vacancy(ies). Vacancies occurring as a result of a recall in which a majority or more of the Directors are recalled and removed, shall be filled by an election conducted at the special members' recall meeting in the manner prescribed by law.

4.5 Recall and Removal of Directors. Any or all Directors may be recalled and removed from the Board by the unit owners, with or without cause, by affirmative vote of a majority of all the voting interests, either at a special members' recall meeting or by written agreement. If more than one Director is sought to be recalled, the recall shall be voted upon separately for each Director. A special members' recall meeting may be called by ten percent (10%) or more of the voting interests and notice thereof shall be mailed or delivered to each unit owner and delivered to the Board at least fourteen (14) days prior to the scheduled meeting. The notice shall state that the purpose of the meeting is to recall one or more Directors, shall contain the information required by law and shall be accompanied by a signature list of at least ten percent (10%) of the voting interests seeking the recall. The special members' meeting must be held not more than sixty (60) days from the date that notice of the meeting is given and shall be conducted in the manner provided by law. If a written agreement is utilized to recall one or more Directors, said agreement shall be served on the Board by certified mail or by personal service in the manner authorized by chapter 48, Florida Statutes, and the Florida Rules of Civil Procedure. Within five (5) full business days after adjournment of the special members' recall meeting or receipt of the written agreement, the Board shall call a meeting of the Board at which it will decide whether to certify (accept) or reject the recall. The Board's course of action following its decision to certify or reject the recall shall be in accordance with governing law.

4.6 Organizational Meeting. The organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors, at such place and time as may be fixed and announced by the Directors at the meeting at which they were elected. No further notice of the organizational meeting is required.

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

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

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

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

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

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

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

4.14 Compensation of Directors and Officers. Directors shall not receive compensation for their services as such. Officers may receive compensation for their services in amounts determined by the Board. Directors and officers may be reimbursed for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

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

5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Association shall be a President, and 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 accounts in such financial institutions authorized to do business in the State of Florida as shall be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board.

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

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 account categories include, but are not limited to, roof replacement, building painting, pavement resurfacing, dock repairs, utility repairs and dredging, as applicable. The amount to be reserved shall be computed by a formula based upon estimated remaining useful life and replacement cost or deferred maintenance expense or replacement cost of each reserve item. These reserves shall be funded unless it is subsequently determined by a majority vote of the voting interests present in person or by proxy at a duly called members' meeting to fund no reserves or less than adequate reserves for a fiscal year. The vote to waive or reduce reserves, if any is taken, may be taken only after the proposed budget has been mailed to the members 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 limited proxy at a duly called members' meeting called for the purpose.

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

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

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

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

6.8 Financial Reports. In accordance with Section 718.111(13) of the Condominium Act, not later than sixty (60) days after the close of each fiscal year, the Board shall distribute to all owners a financial report showing in reasonable detail the financial condition of the Association as of the close of its fiscal year, detailed by accounts, or a complete set of financial statements for the proceeding fiscal year prepared in accordance with generally accepted accounting principles.

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

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

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

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

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

8.4 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a guest, sublessee, member 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. Except that, the Association is precluded from recovering attorney's fees and costs resulting from a legal proceeding involving matters that were the subject of a written complaint that the unit owner filed with the Board by certified mail if the Board did not substantively respond to such complaint in a timely manner as required by law.

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

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

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

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

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

10. MISCELLANEOUS.

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

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

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