

PROPOSED AMENDED AND RESTATED

DECLARATION OF CONDOMINIUM

OF

THE BOARDWALK CAPER, A CONDOMINIUM

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

RECITALS:

In a Declaration of Condominium recorded at O.R. Book 1541, Pages 497 *et seq.* of the Lee County Public Records on September 1, 1981, the Condominium Developer did submit to condominium Ownership pursuant to Chapter 718, Florida Statutes, known as the Condominium Act, that property situated in Lee County, Florida, more particularly described as follows:

PHASE I – THE BOARDWALK CAPER CONDOMINIUM DEVELOPMENT

A PARCEL OF LAND LYING IN SECTION 13, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE NORTHEAST CORNER OF SAID SECTION 13 RUN S 00° 59' 30" E FOR 136.26 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF STATE ROAD 865; THENCE RUN SOUTHERLY ALONG SAID WEST LINE FOR 222.55 FEET ON THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 1195.92 FEET (CHORD BEARING S 10° 18' 12" W, CHORD DISTANCE OF 222.23 FEET) TO THE POINT OF BEGINNING, SAID POINT OF BEING 150 FEET SOUTHERLY OF THE SOUTH LINE OF SIESTA DRIVE AS SHOWN ON THE PLAT OF SIESTA ISLES, UNIT NO. 1, AS RECORDED IN PLAT BOOK 11, PAGE 94 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE CONTINUE SOUTHERLY ALONG SAID WEST LINE FOR 124.5 FEET ON AN ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 1195.92 FEET (CHORD BEARING S 1° 59' 25" W, CHORD DISTANCE OF 124.43 FEET); THENCE RUN S 0° 59' 30" E ALONG SAID WEST LINE FOR 919.86 FEET; THENCE RUN S 89° 00' 30" W FOR 400.00 FEET TO A POINT ON THE EAST LINE OF SIESTA ISLES, UNIT NO. 2, AS RECORDED IN PLAT BOOK 11, PAGE 95 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN N 0° 59' 30" W, 1042.00 FEET ALONG THE EAST LINE OF SIESTA ISLES, UNIT 2 AND UNIT NO. 1 TO A POINT 150 FEET SOUTH OF, AS MEASURED AT RIGHT ANGLES TO, THE SOUTH LIEN OF SIESTA DRIVE AS SHOWN ON SAID PLAT OF SIESTA ISLES UNIT NO. 1; THENCE RUN N 87° 34' 40" E FOR 377.38 FEET ALONG A LINE PARALLEL TO AND 150 FEET SOUTH OF, THE SOUTHLINE OF SAID SIESTA DRIVE; THENCE RUN EASTERLY ALONG SAID PARALLEL LINE FOR 30.48 FEET ON THE ARC OF A CURVE TO THE RIGHT WITH A RADIUS OF 56.51 FEET (CHORD BEARING S 76° 58' 12" E, CHORD DISTANCE OF 30.11 FEET) TO THE POINT OF BEGINNING. CONTAINING 9.622 ACRES, MORE OR LESS.

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In an Amendment to said Declaration of Condominium, recorded at O.R. Book 1601, Pages 1723, *et seq.*, of the Lee County Public Records, the Developer submitted to land Ownership:

PHASE II – THE BOARDWALK CAPER CONDOMINIUM DEVELOPMENT

A PARCEL OF LAND LYING IN SECTION 13, TOWNSHIP 46 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM THE NORTHEAST CORNER OF SAID SECTION 13, RUN S 0° 59' 30" E FOR 136.26 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF STATE ROAD NO. 865; THENCE RUN SOUTHERLY ALONG SAID WEST LINE FOR 347.05 FEET ON THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 1195.92 FEET (CHORD BEARING S 7° 19' 17"W, CHORD DISTANCE OF 345.82 FEET) TO A POINT OF TANGENCY, THENCE RUN S 0° 59' 30" E ALONG SAID WEST LINE FOR 919.86 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING CONTINUE S 0° 59' 30" E ALONG SAID WEST LINE FOR 948.34 FEET, THENCE RUN S 89° 00' 30" W 429.58 FEET TO A POINT ON THE EAST LINE OF SIESTA ISLES, UNIT NO. 2, RECORDED IN PLAT BOOK 11, PAGE 95 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN NORTHERLY ALONG SAID EAST LINE FOR 181.20 FEET ON THE ARC OF A CURVE TO THE LEFT WITH A RADIUS OF 550.0 FEET (CHORD BEARING N 8° 26' 48" E, CHORD DISTANCE OF 180.38 FEET); THENCE RUN N 0° 59' 30" W FOR 770.39 FEET ALONG THE EAST LINE OF SIESTA ISLES UNIT 2 TO A POINT, THENCE RUN N 89° 00' 30" E. 400.00 FEET TO THE POINT OF BEGINNING. CONTAINING 8.746 ACRES, MORE OR LESS.

The original Declaration of Condominium has been amended as follows:

Amendment recorded at O.R. Book 1541, Page 629, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1545, Page 370, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1547, Page 2257, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1552, Page 1328, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1558, Page 260, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1565, Page 2247, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1567, Page 716, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1570, Page 1635, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1579, Page 957, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1580, Page 427, *et seq.*, Lee County Public Records.

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Amendment recorded at O.R. Book 1601, Page 1723, *et seq.*, Lee County Public Records (Submission of Phase II).

Amendment recorded at O.R. Book 1603, Page 1588, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1605, Page 338, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1608, Page 1942, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1608, Page 1945, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1614, Page 2099, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1617, Page 2067, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1618, Page 1967, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1704, Page 3855, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 1707, Page 3637, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 2016, Page 3111, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 2430, Page 2063, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 2786, Page 2023, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 3216, Page 1679, *et seq.*, Lee County Public Records.

Amendment recorded at O.R. Book 4502, Page 0863, *et seq.*, Lee County Public Records.

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

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

1.1 "Act" or "Condominium Act" means the Condominium Act (Chapter 718, Florida Statutes, 2008), as it now exists or as it may be amended from time to time, including the definitions therein contained.

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1.2 “**Articles**” means Articles of Incorporation as attached hereto as Exhibit “B.”

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

1.4 “**Association**” means THE BOARDWALK CAPER CONDOMINIUM ASSOCIATION, INC., a Florida Corporation Not For Profit, the entity responsible for the operation of the Condominium.

1.5 “**Association Property**” means all real property owned by the Association for the use and benefit of the Unit Owners.

1.6 **Authorized Motor Vehicles** means passenger cars, minivans, motorcycles with proper mufflers, SUV^s, pickup trucks up to ¾ ton (open bed pickup trucks must have a covered cargo bed when it contains materials).

1.7 “**Board of Directors**” or “**Board**” or “**Directors**” means the representative body which is responsible for the administration of the Association’s affairs, and which is the same body that is sometimes referred to in the Condominium Act as the “Board of Administration.”

1.8 “**The Boardwalk Caper Project**” means and refers to the entire Boardwalk Caper real estate development of The Boardwalk Caper, Ltd. as the same is more particularly described in the map or plat and legal description thereof which is contained in the Declaration of Covenants, Conditions and Restrictions for The Boardwalk Caper Project. In addition to the various Condominium Associations which administer and operate the respective Condominium Properties in The Boardwalk Caper Project, two additional corporations/associations exist which pertain to the overall operation of the Boardwalk Caper Project. Boardwalk Caper Community Services Association, Inc. (“CSA”) is the corporate entity charged with implementing the Declaration of Covenants, Conditions, and Restrictions for Boardwalk Caper Community Services, Inc. recorded at O.R. Book 1541, Pages 549 *et seq.* of the Lee County Public Records, as amended from time to time (“CSA Declaration”). Boardwalk Caper Boating Association, Inc. (“Boating Association”) is the corporate entity charged with administering the Declaration of Covenants, Conditions, and Restrictions for the Boardwalk Caper Boating Association recorded at O.R. Book 1541, Pages 578 *et seq.* of the Lee County Public Records, as amended from time to time (“Boating Declaration”).

1.9 “**Building**” means the structure in which the Units are located.

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

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

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1.12 “Common Elements” mean and include:

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

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

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

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

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

1.13 “Common Expenses” means those expenses for which Unit Owners are liable to the Association, including but not limited to expenses of administration, maintenance and operation, repair and replacement of Common Elements and such other expenses as may be declared expenses either by this Declaration, the Articles of Incorporation, the Bylaws or by the Association. Common Expenses include, but are not limited to, such items as cost of premiums for hazard and public liability insurance, repairs, replacements and expenses of upkeep, lawn service, utility bills that are not separately metered to individual Units or paid by CSA, pool service, janitor service, accounting and legal fees, wages and fees for managerial and other services, and reasonable and adequate reserves, all as may be required in the maintenance and management of this Condominium. The expenses of bulk cable or master antenna television, and bulk interior pest control, are specifically considered a Common Expense, if so designated by the Board. Common Expenses also include reasonable insurance for Directors and Officers, road maintenance and operation expenses, and security services, which are reasonably related to the general benefit of the Unit Owners even if such expenses do not attach to the Common Elements or Condominium Property. Common Expenses also include the expenses of any items or services required by any federal, state, or local governmental entity to be installed, or supplied to the Condominium Property by the Association, including, but not limited to, fire safety equipment or water and sewer service for any master meter that services only this Condominium and which is not paid by CSA.

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

1.15 “Condominium Documents” means this Declaration; the Surveyor’s Plat, copies of which are attached hereto as Exhibit “A”; Articles of Incorporation of The Boardwalk Caper Condominium Association, Inc. attached as Exhibit “B”; Bylaws attached hereto as Exhibit “C”; and Rules and Regulations attached as Exhibit “D” (the Rules and Regulations need not (but may)

be recorded in the County Public Records in order to be valid); The Declaration of Covenants, Conditions, and Restrictions for the Boardwalk Caper Community Services Association Inc., as amended attached hereto as Exhibit “E”; Articles of Incorporation for the Boardwalk Caper Community Services Association Inc., as amended attached hereto as Exhibit “F”; Bylaws for the Boardwalk Caper Community Services Association Inc., as amended attached hereto as Exhibit “G”; Declaration of Covenants Conditions and Restrictions of the Boardwalk Caper Boating Association attached hereto as Exhibit “H”; Articles of Incorporation of the Boardwalk Caper Boating Association attached hereto as Exhibit “I”; Bylaws of the Boardwalk Caper Boating Association attached hereto as Exhibit “J”.

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

1.17 “Condominium Property” means the land and property interests subjected to condominium Ownership under this Declaration, all improvements on the land as depicted in the Surveyor’s Plat, or replacement thereof of like kind and quality, and alterations or additions made to the Common Elements or Association Property by the Association and all easements and rights appurtenant thereto intended for use in connection with the Condominium. Additions or alterations made to the Units or Common Elements by Unit Owners (or their predecessors in title) are not part of the Condominium Property.

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

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

1.20 “Domestic Partners” means two adults who have chosen to share their lives in a committed relationship that includes a mutual and exclusive commitment to each other’s well-being, wherein each partner shares the same permanent address, have no blood relationship that would preclude marriage, are of the age of legal majority, are jointly responsible for each other’s common welfare, share financial interdependence and mutual obligation akin to those of marriage. Domestic Partners shall be considered as married individuals for the purpose of the Declaration.

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

1.21.1 One natural person, his spouse or Domestic Partner, if any, and their custodial children, if any.

1.21.2 Not more than two natural persons not meeting the requirement of 1.20 above, but who customarily reside together as a single housekeeping Unit, and the custodial children of said parties, if any.

1.21.3 The reference to “natural” herein is intended to distinguish between an individual and a corporation or other artificial entity. “Family” member is a person who resides in a Unit as part of the Owner’s Family, but is not a title holder.

1.22 “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, hurricane shutters, security front doors, acrylic/aluminum lanai enclosures, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms.

1.23 “Fractional Ownership” or “Unit Sharing” means any arrangement (whether written or verbal) whereby multiple individuals, artificial entities, or other combinations acquire title to a Unit (or any other possessory or use right in a Unit) with the intention of allocating use rights among legal or beneficial Owners, whether pursuant to verbal or written agreements, regarding the sharing of use and possession rights for a Unit.

1.24 “Guest” means any person who is not the Unit Owner or a Tenant or a member of the Owner’s or Tenant’s Family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

1.25 “Insurable Improvements” shall mean the “Building” as defined in Article 1.7 of this Declaration, less upgrades or additions by Unit Owners (or their predecessors in title) and those portions of the Condominium Property required by the Act, or this Declaration to be insured by the Association.

1.26 “Invitee” a person or persons allowed entry for the purpose of conducting business with a Unit’s occupant, or otherwise entering the Condominium Property on a temporary basis at the express or implied consent of the Unit Owner.

1.27 “Lease,” when used in the context of the renting of Units, means the grant by a Unit Owner of a right of use of the Owner’s Unit for consideration.

1.28 “Limited Common Elements” shall include property, which is reserved for the use of a certain Unit to the exclusion of other Units as reflected on the condominium plat or in this Declaration. Unless the context requires otherwise, all references in this Declaration to Common Elements shall include Limited Common Elements. Limited Common Elements include the balcony, storage shed, courtyard/patio, lanai, and assigned covered parking spaces. Whenever a portion of the Condominium Property naturally and exclusively services a particular Unit, and where the area in question lies outside of the boundaries of the Unit, the delegation of maintenance responsibility for the area shall serve to define the area as a Limited Common Element. The exception being that (excluding upgrades and improvements made by Unit owners) the balcony, lanai (excluding acrylic/aluminum enclosures), storage shed (excluding

shelving), and courtyard/patio (including its fence and gate) shall be the maintenance responsibility of the Association.

1.29 “Limited Common Expense” means those expenses affiliated with the maintenance, repair, replacement, or reconstruction after casualty of a Limited Common Element, the costs of which are assessed only against the benefiting Unit Owner(s), as authorized by Section 718.113(1) of the Act, and if so provided in this Declaration.

1.30 “Member” means the record Owner(s) of legal title to a Unit.

1.31 “Occupant” when used in connection with a Unit, means a person who is physically present in a Unit on two or more consecutive days, including staying overnight for one night.

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

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

1.34 “Tenant” or “Lessee” means a person occupying a Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said occupancy by the non-Owner involves consideration, the payment of money, the exchange of goods and services, etc. The term “Tenant” shall be used interchangeable with “Lessee”.

1.35 “Unit” means a part of the Condominium Property subject to exclusive Ownership.

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

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

1.38 “Voting Interest” means and refers to the arrangement established in the Condominium Documents by which the Owners of each Unit collectively are entitled to one vote in the Association matters. There are 170 Units, so the total number of Voting Interests is 170.

2. STATEMENT OF CONDOMINIUM DECLARATION. The Boardwalk Caper, Ltd., submitted the property described in Exhibit "A" hereto and as described above to condominium Ownership in accordance with Florida Statutes.

3. CONDOMINIUM NAME. The name by which this condominium is identified is "The Boardwalk Caper, A Condominium".

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

5. SURVEY AND GRAPHIC DESCRIPTION. A survey of the land previously submitted to condominium Ownership and a plat thereof describing each Unit, Common Elements and their relative location and the approximate dimensions of each Unit are as shown on the Surveyor's Plat which is attached as Exhibit "A".

6. VOTING RIGHTS; OWNERSHIP OF COMMON ELEMENTS. The voting rights of the Owner of each Unit shall be 1/170th (one Voting Interest per Unit). The sharing of Common Expenses and Ownership of Common Elements and Common Surplus shall be on a 1/170th basis.

7. COMMON ELEMENTS; EASEMENTS.

7.1 Definition. The term "Common Elements" means all of the property submitted, and as defined in Article 1.10, to condominium Ownership that is not within the Unit boundaries set forth in Section 8 below.

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, unless released in connection with termination of 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 the Unit Owners with respect to such easements.

7.2.1 Utility Easements. Utility Easements are reserved through the Condominium property as may be required for utility services to adequately serve the Condominium; provided, however, easements through any Unit shall only be as specified in the plans and specifications for the Condominium, unless approved in writing and duly acknowledged according to law by the Unit Owner so affected

7.2.2 Easement of Unintentional and Non-Negligent Encroachments. If a Unit shall encroach upon any Common Element, or upon any other Unit, by reason of original construction, then, if the same cannot be corrected at a cost of less than Fifty Dollars (\$50.00), an easement appurtenant to such encroaching Unit shall exist to the extent of such encroachment, so long as such encroachment shall exist.

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

7.2.4 Easements in Parking Areas. Easements are reserved for ingress, egress, and free entry for pedestrian and vehicular traffic over, through, on, and across all driveways and parking areas as from time to time may be established on the Condominium Property; all parking easements are subject to regulations by the Association.

7.2.5 Easements for Maintenance and Repair. Easements through the Units and the Common Elements are reserved for the maintenance, repair and replacement of any portion of said Units or Common Elements. Use of these easements, however, for access to the Units shall be limited to reasonable hours and reasonable prior notice, except that access may be had at any time in the case of an emergency.

7.2.6 Emergency Easements of Ingress and Egress. Easements shall exist over all balconies, porches, or other portions of any Unit which may be used as avenues of exit, whenever reasonably required for emergency exit.

7.3 Restraint Upon Separation and Partition. The undivided share of Ownership on the Common Elements and Common Surplus appurtenant to a Unit cannot be conveyed or separately hypothecated. 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 by a Unit Owner, pledged or transferred except as an appurtenance to the Units.

8. CONDOMINIUM UNITS AND APPURTENANCES. Condominium Units are those cubicles of space, and all improvements constructed therein identified and described in the Surveyor's Plat, Exhibit "A." The horizontal and vertical boundaries of the Condominium Units shall be as follows:

8.1 Horizontal Boundaries: The Condominium consists of 170 Units, contained in two, four-Unit Buildings and twenty-seven, six-Unit Buildings. All Buildings are two stories, containing two bedrooms, two and one-half baths, and are approximately 1200 square feet. Unit Owners shall own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings, together with the walls and partitions contained within the perimeter boundaries of each Owner's respective Unit, including drywall, paint, wallpaper, carpeting or other floor covering as well as the air-conditioning equipment, its cables and conduits which service the said Unit.

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

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

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

8.3.2 Easements. For the benefit of the Unit.

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

8.3.4 Limited Common Elements. The right to exclusive use of the Limited Common Element designated by this Declaration.

8.4 Automobile Parking Space. The Developer initially assigned certain covered parking spaces for exclusive use of respective Unit Owners. Unit owners may lease to, or grant permission to, another unit owner the use of their assigned covered parking space. Unit Owners who are assigned covered spaces should occupy them first before using unassigned parking. No Unit shall be assigned more than one (1) assigned-covered parking space. Unassigned parking spaces shall be available for use by any of the Owners on an open-availability basis. The Condominium was built with a total (both covered-assigned and unassigned) of one and one half (1 ½) parking spaces per Unit.

8.4.1 A Unit Owners desiring to transfer or exchange exclusive use right in a covered parking space with another Unit Owner shall submit a written request to the Board of Directors, which shall then execute an appropriate assignment. The transfer of rights shall be complete upon the execution by the Board of Directors of the assignment and a copy of the assignment shall become a part of the official records of the Association. Owners must notify Lee County Tax Appraiser of the exchange within 30 days of the completed transaction.

8.5 Boat Slips. The Developer initially assigned certain boat slips to particular Units for the exclusive use of the respective Unit Owner, without separate charge therefore by the Association. Each boat slip assignee shall be a member of the Boardwalk Caper Boating Association. Upon the conveyance of, or passing of title to the Unit to which such assignment has been made, the exclusive use of the slip may pass along with title to the Unit. No Unit shall be assigned the use of more than two (2) boat slips.

The exclusive right to use a particular boat slip may be transferred or exchanged between Units in the Boardwalk Caper Project as follows:

8.5.1 The Unit Owners desiring to transfer or exchange such exclusive use right shall submit a written request to the Board of Directors of the Boating Association which shall then execute an appropriate assignment. The transfer of rights shall be complete upon the

execution by the Board of Directors of the Boating Association of the assignment and a copy of the assignment shall become part of the official records of the Association. Owners must notify Lee County Tax Appraiser of the exchange within 30 days of the completion of the transaction.

8.5.2 Unit Owners may only lease their respective boat slips to another Unit Owner in the Boardwalk Caper Project and only upon written approval by the Board of Directors of the Boating Association.

Those Unit Owners entitled to the exclusive use of said boat slips(s) shall bear their pro-rata responsibility of the insurance, maintenance and operation costs of the boat slip(s) by assessment as determined by the Board of Directors of the Boardwalk Caper Boating Association.

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

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

8.7.1 Ingress and Egress through the Common Elements for ingress and egress.

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

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

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

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

9.1 Association Maintenance. The maintenance, repair and replacement of all Common Elements, and Limited Common Elements (except those Limited Common Elements, for which this Declaration delegates responsibility to the Unit Owner), and Association Property

shall be performed by the Association, and the cost is a Common Expense, except as may otherwise be specifically noted with respect to Limited Common Elements. Same shall include, but not be limited to, exterior painting, roofing, pavement, master satellite, and maintaining portions of the Condominium Property exposed to the elements, including but not limited to the storage sheds, the lanai roofs, supporting structures, screens, and screen doors, but shall not include acrylic/aluminum lanai enclosures, nor any alteration or addition to the Condominium Property made by a Unit Owner or his predecessors in title. The Association shall maintain the windows, entry door, and sliding door and screen installations originally installed by the Developer, or replacements thereof of like kind and quality as determined by the Board, but such maintenance responsibility is limited to the frame and encasement only. The Unit Owners shall be responsible for interior paint and molding, locking and opening mechanisms, interior caulking (if necessary or desired), the windowsill (unless part of the window frame), and glass breakage caused by uninsured perils. The Association shall, through the Board of Directors, have the authority to determine, when windows or doors need to be replaced. The style and design shall not require a vote of the Unit Owners, it being understood that styles change periodically, as do applicable codes. The Association shall have the authority to replace all or some components as determined at the discretion of the Board. Enclosures or partitions that were not installed as part of the original construction, such as but not limited to acrylic/aluminum lanai enclosures (if permitted as provided elsewhere in the Condominium Documents) are not the maintenance or insurance responsibility of the Association, and shall be the insurance, maintenance, repair and replacement responsibility of the affected Owner.

The Association's maintenance responsibility includes, without limitation; all electrical conduits located outside the Unit; electrical wiring and conduits within the Unit to the point they exit the drywall (the Association is responsible for the circuit breaker box, but not the circuit breakers); plumbing fixtures and installations located outside the Unit; plumbing supply pipes from the main to the point of, but not including connection with, a valve, faucet, shower or bath control, etc, or the point at which they exit from a wall within the Unit; plumbing drainage pipes from the cleanout to the point of connection with a trap or toilet base plate within the Unit (the Association is not responsible for clogs in the these pipes); installations located within a Unit but serving another Unit; or installations located outside the Unit for the furnishing of utilities to more than one Unit or the Common Elements. The Association shall be responsible for the maintenance and repair of the drywall on the interior surface of the exterior boundary walls, as well as the drywall ceilings of the Unit. Decorations of such surfaces (including but not limited to paint, wallpapering, paneling, etc.) are the responsibility of the Unit Owner. The Association's maintenance responsibility does not include interior non-load bearing partitions, electrical fixtures and appliances, switches or receptacles, plumbing fixtures and appliances, or other electrical, plumbing or mechanical installations located within the Unit and serving only that Unit.

9.1.1 Incidental Damage. If, in connection with the discharge of its maintenance, repair or replacement responsibilities, the Association must remove, disassemble, or destroy portions of the Condominium Property which the Unit Owner is required to maintain,

repair, or replace, the Association shall be responsible for reinstallation or replacement of that item, including cabinetry, drywall and moldings, to its unfinished state, and excluding floor coverings, wall coverings, ceiling coverings, paint, wallpaper, paneling, and other finishes, provided that the Association's obligations are limited to the replacement of items that were part of the Condominium Property as originally installed by the Developer, or replacements thereof of like kind and quality, and except in cases of casualty repair, which shall be governed by Article 13 of this Declaration. Repair or replacement of all upgrades or additions, even if made by a predecessor in title, shall be the responsibility of the Unit Owner, specifically including but not limited to hurricane shutters which the Association must remove in connection with the maintenance of the Building, although the Association may have shutter reinstallation work performed by its contractor, and the Unit Owner will be responsible for reimbursement to the Association as a Charge.

9.1.2 Maintenance and Insurance of Covered Parking Structures.

Notwithstanding anything to the contrary contained in this Declaration of Condominium, the Association shall, pursuant to Section 718.111(11), Florida Statutes (2008), and Section 718.113(1), Florida Statutes (2008), and as both of the same maybe amended from time to time, insure, maintain, repair (including after casualty), and replace (including after casualty) covered parking spaces which have been assigned to particular Unit Owners, at the expense of only those entitled to exclusive use of said covered parking spaces (it is the intention of this Declaration of Condominium that all covered parking space assignees shall bear their pro-rata responsibility of insurance maintenance costs of the covered parking spaces except pavement;). The Board of Directors shall adopt an operating budget and collect assessments and reserves pursuant thereto on the basis that assignees of covered parking spaces bear their pro-rata costs of the assessments and reserves, which are unique to the covered parking spaces assignees, respectively. The Association shall have the authority to enforce payment of the assignee's shares of such costs in the same manner that the Association enforces collection of all other Assessments.

9.1.3 Maintenance of Boat Slips. The Boating Association shall be responsible for the maintenance, operation, repair, replacement, and insurance of the boat slips and related facilities pursuant to the Boating Declaration. Assignees of boat slips shall pay to the Boating Association for such costs. To the extent boat slips are located within the Common Elements of this Condominium, the Association reserves the right to control their usage through this Declaration, or the Board of Directors, to the extent permissible by the Boating Declaration or agreements between this Association and the Boating Association.

9.2 Unit Owner Maintenance. Each Unit Owner is responsible, at his own expense, for all cleaning, maintenance, repairs, and replacements of his own Unit and those Limited Common Elements serving his Unit, if so provided herein, whether ordinary or extraordinary including, without limitation: interior partitions, the finishes thereof, the structural framing related thereto (assuming non-load bearing); all electrical or plumbing facilities located in the Unit, which service only the individual Unit and are not the designated responsibility of the Association as elsewhere stated in this Document, window glass and sliding door glass breakage

caused by uninsured perils; interior locking and opening mechanisms for windows and sliding doors, interior caulking (if necessary or desired), and the window sill (unless part of the window frame); all other doors and the framing and structural components thereof (including trim, caulking, locks and hardware) within or servicing the Unit; all circuit breakers contained within the electrical circuit breaker box; the electrical, mechanical and plumbing fixtures and outlets (including connections) within a Unit and serving only that Unit including sinks, toilets, tubs, showers, shower pans, and all related fixtures and installations; appliances; all portions of the heating and air conditioning equipment (including compressors, air handlers and coolant lines) and utility installations and connections serving an individual Unit, no matter where located, dryer vents to the point of drywall entry; air conditioner discharge lines to the point of termination or connection to another discharge (even if exterior to the Unit); carpeting and other floor covering; door and window hardware and locks; all other facilities or fixtures located or contained entirely within a Unit which serve only that Unit. All incoming plumbing is the responsibility of the Owner inward from the point of exit from an interior wall or connection to a valve, faucet shower or bath control, etc. Outbound plumbing clogs are the responsibility of the Owner until the point of connection to the cleanout, even if outside the Unit boundary. Outbound plumbing maintenance and repair are the responsibility of the Owner inward of the point of connection to a trap, or a toilet base plate. All said areas, if located outside of the boundaries of the Unit, are declared Limited Common Elements. All and any plumbing or electrical which has been modified in any way by the Unit owner or his predecessors is the sole responsibility of the unit owner.

9.3 Additional Unit Owner Obligations. In connection with his maintenance, repair and replacement obligations, the Unit Owner shall have the responsibility to obtain the prior written approval of the Association, through the Board of Directors, before performing any maintenance, repair or replacement which requires: changes or alterations to the physical appearance of the Condominium Property visible from any exterior vantage; excavation; access to the Building roof; relocation of utilities, plumbing, or electrical installations or fixtures or ductwork. The Association may condition such approval on criteria, as the Board deems reasonable, including but not limited to:

- Preservation of uniformity of appearance;
- Use of licensed and insured contractors;
- Right (but not duty) of oversight by the Association or its agent;
- The Unit Owner submitting plans as to the scope of the contemplated repair;
- Restrictions as to hours of work;
- Restrictions regarding equipment that may be parked or stored on or near the Condominium Property during construction.

- Restrictions regarding the transport and storage of materials and supplies necessary for the construction to be performed.

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

9.4 Improvements Requested By Unit Owners. In the event that special improvements, alterations or additions of or to the Common Elements, including but not limited to doors and windows, is requested by an individual Unit Owner or Owners, and it is determined by the Board that such special improvement, alteration or addition is primarily for the benefit of an individual Unit Owner or Owners who have requested the same, then the Board, by an affirmative vote of its majority, shall be authorized to assess the cost thereof against such requesting Unit Owner or Owners on such terms and conditions and in such proportions as the Board by resolution shall determine. Unit Owners requesting "special improvements" do so with the understanding that the improvement(s) that the Unit Owner(s) is/are not excused from future assessments for similar improvements undertaken by the Association. The requested improvement alteration or addition must meet the specifications set forth by the Board. The Board shall approve a contractor to perform the work who is licensed by the State of Florida, is insured, and carries workman's compensation insurance (if so required). Implementation of the special improvement shall not begin until the applicant(s) have satisfied the assessed cost thereof as the Board by resolution has determined.

9.5 Alterations by Unit Owners. No Owner may make or permit the making of any modifications or alterations to any portion of his Unit visible from the exterior, or in any manner change the appearance of any portion of the Common Elements, or make any structural change within the Unit interior, without first obtaining the written consent of the Board of Directors, which consent shall be denied if the Board determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or whole. "Structural" modifications or alterations include, but are not limited to: relocation of existing electrical, plumbing, ductwork, air conditioning or heating installations; relocation of existing fixtures or appliances such as toilets, sinks, tubs, showers; the removal or modification of any exterior door, window or screen; or raising ceilings. For purposes of this provision, the term

“structural” work shall also include the addition, removal, or relocation of any ductwork, plumbing line or fixture, any electrical line or fixture. Replacement of cabinetry, appliances, fixtures, etc., with substantially equivalent installations, in the same location, shall not be deemed “structural” and shall not require approval of the Association, unless a building or other permit is required. Further, “structural” work shall include any and all work that requires a building permit, an electrical permit, a plumbing permit, a mechanical permit, or similar permit from the appropriate governmental agency, whether or not mentioned above.

The Board may, in appropriate circumstances, require sealed plans from an Architect or Professional Engineer licensed to practice in Florida as a condition of reviewing any requested structural modification, alteration or addition to the Condominium Property. The Board, in reaching its decision, may take into account uniformity of appearance, compatibility with architecture in The Boardwalk Caper, A Condominium, the quality of the proposed alteration, objections of neighboring residents, and such other criteria as the Board may reasonably adopt in reaching its decision. If the Board determines to permit any alteration or addition which is visible from the exterior of the premises, from any vantage, said addition or improvement must also be approved by the Unit Owners in the manner provided in Article 9.8 of the Declaration of Condominium, regardless of the cost or expense of such addition or alteration. If any Unit Owner requests removal of any structural alteration or modification, the Association may permit such removal or modifications if same would not materially affect or interfere with the utility services constituting Common Elements, if any, located therein, the structural integrity of the Building or create a nuisance or disturbance to neighboring Units. In the case of all fixtures on the exterior surfaces the following rules apply: Fixtures such as but not limited to hurricane shutters and security front doors with screens, and acrylic/aluminum lanai enclosures may be added to the exterior of individual units under the following stipulations: (1) The Board has the right at any time it deems necessary, to change the specifications for these fixtures in any and all ways (2) The design of such fixtures must meet the specifications determined by the Board and must be presented in writing and in detail to the Board of Directors. The Board must approve the design by resolution before installation 3) The Unit owner must purchase, install himself (when allowed by law), or arrange for installation by a licensed/insured contractor, and maintain the fixture in satisfactory condition at the owner’s expense. (4) If the board of Directors determines at its sole discretion, that any fixture applied under these rules by a Unit owner becomes deficient in appearance or that it becomes a detriment to soundness, safety, or security, then the Board may at its sole discretion arrange to correct the deficiency or remove the fixture and charge the owner for such corrections, with full rights to place liens on the apartment to collect.

9.6 Additional Unit Owner Responsibility for Alterations and Additions. If a Unit Owner (or his predecessors in title) makes, or has made any modifications, installations, or additions to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the Unit Owner (and his heirs, successors in title and assigns) shall be financially responsible for any and all consequences resulting from the modifications, installations, or additions to the interior or exterior of the Unit, Common Elements, or Limited Common Elements, the insurance, maintenance, care, preservation, reconstruction, repair or replacement of the modifications, installations or additions

and shall execute such documents as the Association may promulgate, if any, accepting said financial responsibility. Any modification, alteration, or addition to the Condominium Property made by a Unit Owner may be required to be removed in connection with the Association's maintenance of the Condominium Property. In such cases, the Unit Owner who installed the alteration, addition, or improvement (and/or their successors in title) shall be obligated to reimburse the Association for any costs affiliated with removal and/or re-installation of the item, with said obligation being secured by a right of lien for Charges of equal dignity to the Common Expense lien created by this Declaration, or alternatively, said Owner may be required to remove and reinstall said additions, if so determined by the Board of Directors. Further, the Association, its contractors and agents, shall not be liable for any damage to the item arising out of its removal and/or reinstallation, unless occasioned by the gross negligence or willful misconduct of the Association or its contractor or agent, although the Association may provide for stricter liability standards in contracts with contractors.

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

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

9.9 Damage Caused by Conditions of the Condominium Property. Each Unit Owner shall be liable to the Association and/or other Unit Owners for the expenses of any maintenance, repair or replacement of the Condominium Property, made necessary by his actions, or by that of any member of his Family or his or their Occupants, Guests, Tenants or Invitees. If any condition, defect or malfunction existing within a Unit or Common Elements which the Unit Owner is obligated to insure, maintain, repair, or replace if caused by the Owner's (his Family Member's, Occupant's, Guest's, Tenant's or Invitee's) action or failure to comply with the Condominium Documents or applicable law, shall cause damage to the Common Elements,

Association Property, or to other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance (including the deductible) and without waiver of any insurer's subrogation rights, provided that such responsibility shall be conditioned on the neighboring Unit(s) being adequately insured based on local standards and conditions. Further, any claim of a Unit Owner against the Association or another Unit Owner relative to damage to the Condominium Property, to the extent the Association or other Unit Owner might otherwise be liable pursuant to the Condominium Documents or applicable law, shall be predicated upon the Unit Owner making the claim being adequately insured based on local standards and conditions. Should any Unit Owner fail to maintain such insurance, any claim will be reduced to the extent such Unit Owner's insurance, if obtained pursuant to the above-described standards, would have provided coverage or compensation for the loss and without waiving any other remedy of the Association regarding Unit Owner insurance requirements. The requirement that the individual Unit Owner obtain insurance shall not be construed to confer any additional liability on the Association or other Unit Owners, but is intended to require Unit Owners and the Association to respectively insure risks that are customarily experienced in condominiums located in Florida's coastal Communities, condominiums in general, including but not limited to damages occasioned by windstorms, hurricanes, tornadoes, floods, rainstorms, bursting pipes, water seepage and leakage, and mold and mildew. If one or more of the Units involved is not occupied at the time a damage incident is discovered (regardless of the cause), the Association may enter the Unit(s) without prior notice to the Owner(s) and take reasonable action to mitigate damage or prevent its spread, at the Unit Owner's expense. The Association may, but is not obligated to, repair the damage without the prior consent of the Owner, in the event of an emergency, and the Owner shall be responsible for reimbursement of the Association, with the cost being secured by a lien for Charges. Unit Owners are required to shut off all water valves when the Unit will be unoccupied on an overnight basis.

Unit Owners are also required to ensure that electricity, and if separately metered, water and sewer, are always available to service the Unit. If Unit Owner fails to maintain Utility Services to Unit, the Association shall have, without waiver of other remedies, the right to enter to the Owner's Unit and Limited Common Element and take any and all lawful actions to make the utilities available to service the Unit, in which event the Unit Owner shall be charged for such activities (including attorneys' fees incurred by the Association) by the Association which shall be secured by a lien for Charges.

9.10 Combination of Units. Combining Units is prohibited.

9.11 Hurricane Protection. The Board of Directors shall adopt hurricane shutter specifications for each building within the each Condominium operated by the Association, which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code.

The Board may, subject to the provisions of Section 718.3026, Florida Statutes (2008), as amended from time to time, and the approval of a majority of Voting Interests of the Condominium, install hurricane shutters or hurricane protection that complies with or exceeds

the applicable building code, or both, except that a vote of the Owners is not required if the maintenance, repair, and replacement of hurricane shutters or other forms of hurricane protection are the responsibility of the Association pursuant to this Declaration of Condominium. However, where hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection which complies with or exceeds the current applicable building code has been previously installed, the Board may not install hurricane shutters or other hurricane protection.

The Association shall be responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection authorized by this Article 9.12 if such hurricane shutters or other hurricane protection are the maintenance, repair and replacement responsibility of the Association pursuant to this Declaration of Condominium. If the hurricane shutters or other hurricane protection authorized by this Article 9.11 are the maintenance, repair and replacement responsibility of the Unit Owners pursuant to this Declaration of Condominium, the responsibility for the maintenance, repair, and replacement of such items shall be the responsibility of the Unit Owner.

The Board may operate shutters installed pursuant to this Article 9.12 without permission of the Unit Owners only where such operation is necessary to preserve and protect the Condominium Property and Association Property. The installation, replacement, operation, repair, and maintenance of such shutters in accordance with the procedures set forth herein shall not be deemed a material alteration to the Common Elements or Association Property within the meaning of the Act or this Declaration.

Notwithstanding any provision to the contrary in the Condominium Documents, if approval is required by the Documents, a Board shall not refuse to approve the installation or replacement of hurricane shutters by a Unit Owner conforming to the specifications adopted by the Board.

The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection by the Board pursuant to this Article 9.12 shall constitute a Common Expense as defined herein and shall be collected in the manner of Common Expense Assessments generally, if the Association is responsible for the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection pursuant to this Declaration of Condominium. However, if the maintenance, repair, and replacement of the hurricane shutters or other hurricane protection is the responsibility of the Unit Owners pursuant to this Declaration of Condominium, the cost of the installation of the hurricane shutters or other hurricane protection shall not be Common Expense, but shall be charged individually to the Unit Owners based on the cost of installation of the hurricane shutters or other hurricane protection appurtenant to the Unit. Notwithstanding the provisions of Section 718.116(9), Florida Statutes (2008) as amended from time to time, and regardless of whether or not the Declaration requires the Association or Unit Owners maintain, repair, or replace hurricane shutters or other hurricane protection a Unit Owner who has previously installed hurricane shutters in accordance with Section 718.113(5), Florida Statutes (2008) other hurricane protection or laminated glass architecturally designed to function as hurricane protection, which hurricane shutters or other

hurricane protection or laminated glass comply with the current applicable building code, shall receive a credit equal to the pro rata portion of the assessed installation cost assigned to each Unit. However, such Unit Owner shall remain responsible for the pro rata share of expenses for hurricane shutters or other hurricane protection installed on Common Elements and Association Property by the Board pursuant to Section 718.113(5), Florida Statutes (2008) and shall remain responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters or other hurricane protection.

10. ASSESSMENTS AND CHARGES. Assessments against Owners shall be made by the Board of Directors of the Association, in the manner provided in the Bylaws and as follows, and shall be borne by the Unit Owners on the basis set forth in Article 6 and elsewhere in these Condominium Documents.

10.1 Liability for Assessments and Charges. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments and Charges coming due while he/she is the Unit Owner. Except as provided in Article 10.5, any person or entity which acquires title to a Unit shall be jointly and severally liable with their predecessor in title for all unpaid Assessments and Charges against the predecessor for his/her share of the Charges and Assessments, including attorney's fees and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid by the transferee. The liability for Assessments or Charges may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments or Charges are made.

10.2 Default in Payment of Assessments for Common Expenses. Assessments and Charges, and installments thereof, not paid within ten (10) days from the date when they are due shall incur a late fee and bear interest in an amount as may be determined by the Board of Directors which, unless otherwise specified, shall be the maximum allowed by law. The Board shall accelerate unpaid Assessments in the manner prescribed by law. The Association has a lien on each Condominium Parcel for any unpaid Assessments or Charges on such parcel, with interest, late charges and for reasonable attorney's fees, costs, and other collection expenses, including those expenses provided in contracts between the Association and third parties, including but not limited to Community Association Management Firms, incurred by the Association incident to the collection of the Assessment or Charge or enforcement of the lien. No lien may be recorded until the Association has provided notice of intent to place a lien, as required by the Act. The Association's costs and expenses in preparing and sending such notice (including but not limited to attorney's fees, contractual collection expenses, postage, and other costs and expenses reasonably incurred) may be added to the amounts claimed due in the pre-lien notice and if not timely paid, shall be secured by the Association's lien. The lien is in effect until all sums secured by it have been fully paid or until barred by law. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon recording, the Association's claim of lien shall relate back to the date of the filing of the original Declaration of

Condominium. Upon payment in full, the Condominium Parcel is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose a lien for Assessments or Charges in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments or Charges or without waiving any claim of lien.

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

10.4 First Mortgagee. The priority of the Association's lien and the obligation for payment of past due Assessments or Charges in relation to first mortgagees who obtain title as a result of foreclosure or deed in lieu of foreclosure, shall be determined by the Florida Condominium Act, Chapter 718, Florida Statutes (2008), as amended from time to time.

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

10.6 Certificate of Unpaid Assessments. Any Unit Owner has the right to require from the Association a certificate showing the amount of unpaid Assessments against him/her with respect to his/her Unit. The Association, its agents, and counsel shall be entitled to charge a fee for preparing such information, in amounts established by the Board, or in a management agreement between the Association and a Community Association Management Firm, or based on reasonable and customary fees charged by legal counsel.

10.7 Lien for Charges. There is created by this Declaration a common law and contractual lien to secure any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which is not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a lien for Charges exists to secure repayment to the Association when it must remove

or reinstall Unit Owner alterations or items of Unit Owner insurance, maintenance, repair or replacement responsibility in connection with the Association's discharge of its Common Element maintenance responsibilities, or address emergency situations, such as water extraction from a Unit. The lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorney's fees, costs and expenses of collection.

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

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

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

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

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

11.5 Acquisition or Transfer of Real Property; Leasing Common Elements and Association Property. The power to acquire or transfer real property owned by the Association or otherwise convey and mortgage real property for the use and benefit of its members with the same approval of Unit Owners as needed to amend the Declaration. No Unit Owner approval

shall be required to purchase (or mortgage) a Unit through foreclosure, deed in lieu of foreclosure, or in connection with the Association's right of first refusal approval or disapproval set forth in Article 17 hereof. Leasing of Units, Common Elements or Association Property may be approved by the Board of Directors, as well as the lease fees, use fees, and other fees permitted by the Act or the Condominium Documents.

11.6 Membership Agreements. The Association, through the Board of Directors shall have the authority, without need for approval of the Unit Owners, to enter into leases, easements, licenses, and other agreements with the Boating Association and/or CSA, as are necessary in the opinion of the Board of Directors, to effectuate the intent of the original Developer of the Boardwalk Caper Project, regarding the administration of commonly used facilities and administration of the boat slips.

11.7 Fees for Use of Common Elements; Other Fees and Deposits. Pursuant to Section 718.111(4), Florida Statutes (2008), as amended from time to time, the Board of Directors shall have the authority to set use fees for private use of Common Elements or Association Property, as well as the regulations and policies pertaining to such use. The Board of Directors may also establish other fees and deposits determined necessary by the Board. Without limitation, same include but are not limited to: fees for remote control or other access devices; facsimile service and other services using Association equipment. Nothing in this Declaration shall be construed as obligating the Association to provide any of the aforementioned services.

11.8 Lease of Association Property or Common Elements. The power to lease Association Property or Common Elements, as determined by the Board of Directors, including, but not limited to, the lease of the Building roof area and other Common Elements for antennas or other telecommunications equipment. No use fee may be charged against a Unit Owner for use of the Common Elements or Association Property except fees set by the Board pertaining to an Owner having exclusive use of the Common Elements or Association Property, or as agreed by the Association and the party leasing Association Property or Common Elements, pursuant to an oral or written Lease agreement, or fees authorized by this Declaration of Condominium.

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

Notwithstanding anything contained herein or in the Condominium Documents or any other document governing or binding the Association, the Association shall not be liable or responsible

for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium Property, including, without limitation, residents and their Families, Guests, Tenants, Invitees or for any property of any such persons. Without limiting the generality of the foregoing:

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

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

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

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

As used in this section, "Association" shall include within its meaning all of the Association's Directors, Officers, and Committee Members, and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer.

11.10 Disclaimer, Waiver, and Release of Claims Regarding Mold and Mildew. Mold occurs naturally in almost all indoor environments. Mold spores may also enter a Condominium through open doorways, windows or a variety of other sources. The Unit Owner acknowledges that the Condominium is located in a hot, humid climate, which is conducive to the growth of mold and/or mildew. Mold and/or mildew may be present in the indoor air and/or on the interior surfaces of the Unit, including, but not limited to, wall cavities, windows, and/or on the exterior surfaces of the Unit or any part thereof. The Unit Owner can take positive steps to reduce and/or eliminate the occurrence of mold growth in and around the Unit and thereby minimize the possibility of adverse effects that may be caused by mold and/or mildew. The Board of Directors shall have the authority to adopt reasonable Rules and Regulations regarding maximum temperatures for Units and/or require that the air conditioning to the Units be set at a certain

temperature to control humidity and mold and/or mildew growth, and/or adopt other Rules and Regulations indented to prevent mold and/or mildew.

The Association shall not be responsible for the prevention of mold and/or mildew or any damages, including, but not limited to any special or consequential damages, property damages, personal injury, loss of income, emotional distress, death, loss of use, loss of income diminution or loss of value of the Unit, economic damages, and adverse health effects relating to, arising from or caused by mold and/or mildew accumulation regardless of the cause of said mold/or mildew.

Each Unit Owner and each other person having an interest in or lien upon, or making any use of, any portion of the Condominium Property shall be bound by this provision and shall be deemed to have automatically waived any and all claims, obligations, demands, damages, causes of action, liabilities losses and expenses, whether now known or hereafter known, foreseen or unforeseen, that such person has, or may have in the future, in law or in equity against the Association, its Officers, Directors, or Committee Members and without waiving, reducing or otherwise modifying coverage obligations or subrogation rights of any insurer arising out of, relating to, or in any way connected with indoor air quality, moisture, or the growth, release, discharge, dispersal or presence of mold and/or mildew or any chemical or toxin secreted there from.

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

12. INSURANCE. The insurance which shall be carried upon the Condominium Property, including the Units, Common Elements, and Association Property shall be as follows:

12.1 Authority to Purchase Insurance. All insurance policies shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their respective interests may appear.

12.2 Hazard Insurance.

12.2.1 Casualty. Except as otherwise provided herein, the Association shall obtain and maintain fire, wind, general casualty, flood and extended coverage insurance with a responsible insurance company upon all of the Insurable Improvements of the entire Condominium, including Association Property, the Common Elements, the Units, and the personal property of the Association, for the adequate replacement or insurable value thereof, including coverage for changes in building codes, and less a commercially reasonable deductible as determined by the Board, provided the Board may exclude landscaping, exterior grounds improvements not customarily insured by condominium associations in the locality, and foundation and excavation costs, in its discretion. If so permitted by the Act, it is the intention of this Declaration that the Association will insure all Limited Common Elements, as originally installed by the Developer (or

replacement of like kind and quality). However, the Board of Directors shall, where so provided anywhere in this Declaration, pass on insurance costs applicable to Limited Common Elements to those Unit Owners having the exclusive thereof, and on a pro-rata basis for Limited Common Elements used by more than one Unit Owner, such as parking structures. In the event the Declaration does not indicate a specific intention to pass on the cost of Limited Common Element insurance as a Common Limited Common Expense, then such item shall be insured by the Association, as a Common Expense, and not withstanding any provision in this Declaration with regard to the repair of such items after casualty or the allocation of post-casualty repair costs not covered by insurance. The Association shall determine the adequate insurable value of the Insurable Improvements through independent appraisal, at least every 36 months, so long as required by the Act. The Board shall establish the deductible annually, at a duly noticed meeting of the Board, and shall give notice of such meeting, and determine the deductible, as required by the Act, so long as required by the Act. Notwithstanding the foregoing requirement, the Association, through its Board of Directors, will have fulfilled its duty to obtain insurance coverage if it obtains and maintains such insurance coverage as may be reasonably available from time to time given market and economic conditions, provided such coverage shall always meet the minimum level of adequate coverage required by Section 718.111(11), Florida Statutes (2008), as amended from time to time. The original policy of insurance shall be held by the Association, and mortgagees shall be furnished, upon request, mortgage endorsements covering their respective interests. The word "Building" or "Insurable Improvement" in every hazard policy issued to protect a condominium building does not include: personal property in the Unit or Limited Common Elements; Unit floor, wall, or ceiling coverings; Unit or balcony electrical fixtures; appliances; water heaters; water filters; built-in cabinets or countertops; window treatments, including curtains, drapes, blinds, hardware and similar window treatment components; and replacements of any of the foregoing, which are located within the boundaries of a Unit and serve only one Unit. The Unit Owners shall also be responsible to insure all alterations, modifications or additions made to the Unit, Limited Common Elements, or Common Elements by said Unit Owner, or his predecessor in interest or title.

12.2.2 Liability Insurance. The Association shall obtain and maintain public liability insurance covering all of the Common Elements and Association Property and insuring the Association and the Unit Owners as their interest may appear in such amount as the Board of Directors may deem appropriate. The Board of Directors shall have authority to compromise and settle all claims against the Association or upon insurance policies held by the Association. The Unit Owners shall have no personal liability upon such claims, except as may be otherwise provided by law, and nothing herein contained shall in any way be construed as imposing upon the Association a duty to assess Unit Owners for the purpose of raising sufficient funds to discharge any liability in excess of insurance coverage.

12.2.3 Worker's Compensation. Such worker's compensation coverage as may be required by law, or deemed advisable by the Board.

12.2.4 Other Insurance. Such other insurance as the Board of Directors may from time to time deem to be necessary, including but not limited to Errors and Omissions Officers and Directors Liability insurance coverage and insurance for the benefit of its employees.

12.3 Deductible and Other Insurance Features. The Board of Directors shall establish the amount of the deductible under the insurance policies, and other features, as it deems desirable and financially expedient, in the exercise of its business judgment, and in the method provided by the Act. The deductible shall be consistent with industry standards and prevailing practice for Communities of similar size and age, and having similar construction and facilities in the locale where the condominium property is situated.

12.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, or if applicable, a Limited Common Expense.

12.5 Insurance Shares or Proceeds. Insurance proceeds of policies purchased by the Association covering property losses shall be paid to the Association, and all policies and endorsements thereon shall be deposited with the Association. The duty of the Association shall be to receive such proceeds as are paid and to hold and disburse the same for the purposes stated herein and for the benefit of the Unit Owners and their mortgagees in the following shares:

12.5.1 Common Elements; Proceeds On Account Of Damage To Common Elements. An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

12.5.2 Unit; Proceeds On Account Of Damage To Units Shall Be Held In The Following Undivided Shares.

12.5.2.1 When The Condominium Building Is To Be Restored: For the Owners of damaged Units in proportion to the costs of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

12.5.2.2 When The Condominium Building Is Not To Be Restored: An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Expenses appurtenant to the Unit.

12.5.2.3 Common Elements and Units: When both Common Elements and those portions of the Unit insured by the Association are damaged by a common occurrence, the proceeds of insurance shall be allocated between damage to Common Elements, Limited Common Elements, and Units as the Board of Directors shall determine. It shall be presumed that when there are insurance proceeds received on account of a common casualty, but insufficient proceeds for casualty repair (including but not limited to shortfalls occasioned by the existence of a deductible), that such shortfalls shall first be applied to Common Elements damage, and then to damage to Units and Limited Common Elements, it being the intent of this provision that when there is a common casualty loss causing significant damage to the premises,

the shortfalls occasioned by deductibles shall be first apportioned to all Unit Owners in proportion to their share of the Common Elements and not applied first to Unit damage

12.5.3 Mortgages. In the event a mortgage endorsement has been issued as to a Unit, the share of that Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear; provided, however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds.

12.6 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed in the following manner:

12.6.1 Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them, or, at the option of the Board, may be deposited in the Association's reserve fund.

12.6.2 Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with the Plan of Termination approved pursuant to Article 19.

12.7 Association as Agent. The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a mortgage or other lien upon any Unit and for each Owner of any other interest in the Condominium Property or any property in which the Association owns an interest, to adjust all claims arising under insurance policies by the Association, and to execute and deliver releases upon the payment of such claim.

12.8 Insurance by Unit Owners. Unit Owners are required to purchase and maintain adequate insurance coverage as follows. Title insurance is optional, and is the sole responsibility of the Unit Owner. Flood insurance, excess to the Association's coverage is optional. Unit Owners are required to carry basic hazard and liability insurance. Such insurance must include liability coverage of at least \$300,000.00 (which may be changed from time to time through the Rules and Regulations) for injury to persons or property occurring within the Unit, the Limited Common Elements, or claims involving the Unit Owner's Family members, Tenants, Guests, Invitees and Unit Occupants. Unit Owners shall also be required to carry hazard insurance (commonly known as "HO-6" insurance, or similar product), in amounts deemed sufficient by the Board (which may establish additional and supplemental individual Unit Owner's insurance obligations from time to time through the Rules and Regulations) to provide for the Unit Owner's having adequate insurance to rebuild the interior of the Condominium premises, and any other items the Owner is obligated to reconstruct after casualty in the event of a casualty loss. Owners are also required to carry at least \$2,000.00 in Special Assessment coverage, and are encouraged to obtain such other coverages as

their individual insurance agent may recommend to provide full protection. Every hazard insurance policy issued or renewed on or after January 1, 2009, must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. The Board may require that Unit Owners provide Certificates of Insurance, or other appropriate evidence of the Unit Owners carrying such insurance. The Board may, but shall not be obligated to, obtain insurance on behalf of individual Unit Owners, secured by a right of lien, as provided in the Act. The Association shall be a named additional insured and loss payee on all hazard and liability policies obtained by the Unit Owner pertaining to the Unit.

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

13.1 Common Elements. If the damaged improvement is any of the Common Elements and/or Limited Common Elements, the damaged Common Element and/or Limited Common Elements shall be reconstructed or repaired, unless the Condominium is to be terminated as provided elsewhere herein.

13.2 The Building.

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

13.2.2 Major Damage. If the damage renders more than 50% of the Units in the Condominium uninhabitable, as determined by the Board of Directors or governmental agencies of jurisdiction, the damaged property will be reconstructed or repaired, unless 66 2/3% of the entire Voting Interests in the Condominium agree in writing that such reconstruction or repair shall not take place. The decision whether or not to reconstruct or repair shall be made within one hundred eighty (180) days after the casualty, provided however that the Board of Directors shall have the authority to extend this period for decision-making, not to exceed two (2) years, to deal with exigencies in communication with Unit Owners caused by natural disasters or other significant casualties, or to deal with delays in obtaining information regarding reconstruction costs or insurance proceeds available for reconstruction.

13.2.3 Plans and Specifications. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, as set forth in the plans and specifications for the Building, or if not, then according to plans and specifications approved by the Board of Directors, regardless of whether it is a material alteration or substantial addition as described in Article 9.8 and no vote of the Unit Owners shall be required. However, if the application of a governmental regulation or code requires that a building be elevated to or above the base flood elevation when it is reconstructed, the plans and specifications must be approved by all record Owners and all record lienholders. Such approvals

must be obtained within three (3) years after the casualty, and if such approvals are not obtained, the Condominium shall be terminated in accordance with the procedures in Article 19.

13.2.4 Definition of “Uninhabitable”. For purposes of this Declaration, “uninhabitable” shall mean that the Board of Directors has concluded that the Condominium Property which the Association is required to insure cannot be restored to the condition (or a better condition) in which it existed prior to the casualty through available insurance proceeds, plus a special assessment against each Unit Owner not to exceed 10% of the average fair market value of the Units, as determined by the Board. This calculation shall not include costs affiliated with those items the Unit Owner is obligated to repair or replace, at the Unit Owner’s expense. A governmental agency’s declaration or order that the Condominium Property may not be occupied for a defined period of time due to safety concerns shall not conclusively establish that Units are uninhabitable, provided that the Units can be made safe for occupancy pursuant to the standards set forth above. In the event of a dispute as to whether or not Units are “habitable”, a resolution enacted by the Board shall be binding on all parties, unless wholly arbitrary or contrary to law.

13.3 Responsibility. All reconstruction work after a casualty for damaged items that the Association insures shall be undertaken by the Association, except that a Unit Owner may undertake reconstruction work on portions of the Unit with the prior written consent of the Board of Administration. However, such work, and the disbursement of insurance proceeds, may be conditioned upon the approval of the repair methods, the qualifications of the proposed contractor, the contract that is used for that purpose, and reasonable verification of appropriate steps to ensure that the work is done and that the contractor is paid for the performance of said work. Unit Owners shall be responsible for reconstructing those items that the Unit Owners are required to insure. All required governmental permits and approvals must be obtained prior to commencing reconstruction. Assessments for the cost of the work shall be set forth in Article 13.5 below. If an Owner fails to repair and reconstruct those items that the Unit Owner is responsible for under this Declaration, the Association shall have, without waiver of other remedies, the right to proceed in accordance with Article 9.9, in which event the Unit Owner shall be charged for the costs of such activities (including attorney’s fees incurred by the Association) by the Association which shall be secured by such rights as exist for collecting Common Expenses under these Condominium Documents i.e., a lien for Charges.

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

13.5 Assessments. If the proceeds of insurance are not sufficient to defray the estimated or actual costs of reconstruction and repair by the Association (including shortfalls or no insurance proceeds occasioned by a deductible or uninsured casualty loss), or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made as follows. If the damage includes those parts of a Unit or Limited Common Element, or

additions or upgrades, for which the responsibility of maintenance and repair is that of the Unit Owner, the Unit Owner shall be responsible for the expenses relating to the reconstruction and repair after casualty of said portion of the work, even if the damage was caused by the Association's removal, disassembly, or demolition of the Condominium Property if such was connected to the Association's responsibility for reconstruction or to mitigate damage, notwithstanding any requirement to repair incidental damage found elsewhere in the Declaration. Assessments shall be against all Unit Owners as a Common Expense for damage to the Common Elements (including Limited Common Elements, which the Association maintains, repairs, and replaces as a Common Expense), in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Expenses. Assessments shall be a Limited Common Expense if damage is to a Limited Common Element that the Association maintains as a Limited Common Expense. It is the intention of this provision to provide an alternative method of allocating post-casualty repair expenses, as authorized by the Act. The Board of Directors may record a notice to that effect without need of further approval of Unit Owners.

13.6 Termination of Condominium if Not Reconstructed. If the Owners vote not to reconstruct the Condominium by vote described in Article 13.2.2 hereof, the Condominium shall be terminated in accordance with the procedures set forth in Article 19 hereof.

13.7 Additional Board Authority. In addition to Board authority granted by law and the Condominium Documents, the Board shall have the following power and authority after a casualty:

13.7.1 To determine after a casualty whether the Units can be safely occupied, which decision shall not be conclusive as to the determination of habitability in Article 13.2. Such decision shall be based upon the advice of emergency management officials or a licensed professional.

13.7.2 To declare any portion of the Condominium Property or Association Property unavailable for occupation by Owners, Family members, Tenants, or Guests after a casualty, including during the rebuilding process. Such decision by the Board shall be based upon the advice of emergency management officials or a licensed professional (such as an engineer) and can be made only if necessary to protect the health, safety, or welfare of the Association, Owners, Family members, Tenants, or Guests.

13.7.3 To mitigate damage and take action to prevent the spread of fungus (including but not limited to mold and mildew) by tearing out wet drywall and carpet (even if the Unit Owner is obligated to insure and/or replace those items) and to remove personal property from the Unit and dispose of damaged property or store such property onsite or at an offsite location, with Owners responsible for reimbursing the Association for items for which the Owner is responsible but which may be necessary to prevent further damage. The Association shall bear no liability for such actions, if taken in good faith.

13.7.4 To contract on behalf of Unit Owners, with said Owners responsible to reimburse the Association, for items for which the Owner is responsible but which may be necessary to prevent further damage. Without limitation, this includes debris removal, dry-out of Units and replacement of damaged air conditioners when necessary to provide climate control in the Units. The Unit Owner shall be responsible to reimburse the Association within ten (10) days of the Association's invoice. The Association's right to payment shall be secured by a Common Expense Lien as provided in the Act and actions to collect such sums shall entitle the Association to recover interest, late fees, attorney's fees, and other costs and expenses of collection.

13.7.5 To implement a disaster plan prior to, during or after an impending disaster including, but not limited to, shutting down elevators, electricity, security systems, and air conditioners.

13.7.6 To adopt, by Board action, emergency assessments with such notice deemed practicable by the Board.

13.7.7 To adopt emergency Rules and Regulations governing the use and occupancy of the Units, common elements, limited common elements, and Association property, with notice given only to those Directors with whom it is practicable to communicate.

13.7.8 To enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

13.7.9 To exercise all emergency powers set forth in the Act.

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

14.1 Occupancy of Units; Single Family Residence. A Condominium Unit shall be used only as a Single Family residence. As used in the Condominium Documents, "Single Family" means one natural person, a group of two or more natural persons who customarily reside together as a Single Family housekeeping Unit, each of whom is related to each of the others by blood, marriage (or domestic partnership) or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping Unit. No more than five (5) persons may permanently occupy a Unit two (2) bedroom Unit, provided, however, that the Board may grant exceptions when necessary to comply with Fair Housing laws. For purposes of these Condominium Documents, "permanently occupy" means to sleep in the Unit for more than thirty (30) nights during a calendar year. No Unit may be divided or subdivided into a smaller Unit nor any portion sold or otherwise transferred. Visitation by Guests is governed by Article 15 of this Declaration of Condominium. Units may not be used for commercial or business purposes. Unit Owners (and their Family members and Tenants) may use Units for "home office" or "telecommuting" purposes, provided that such uses do not involve customers or clients coming onto the Condominium Property, the postage of any signage in the Condominium, the storage of equipment, products, or

materials in the Condominium, nor more than two regular deliveries per day of correspondence or similar items from customary express delivery services.

14.2 Nuisance. The Condominium Property shall not be used for any immoral, improper or unlawful purpose and no use or behavior shall be allowed which will create a public or private nuisance, nor which shall unreasonably interfere with the quiet possession or enjoyment of the Condominium Property, nor which becomes a source of annoyance to the condominium residents, or which will increase insurance rates. All property shall be kept in a neat and orderly manner. The Common Elements shall be used for the purpose of furnishing services and facilities as herein provided for the welfare and enjoyment of such residents. The Condominium Property shall be used in accordance with all federal, state, and local laws and ordinances.

14.3 Pets. Owners may have small pets provided that they do not disturb neighbors. A pet is defined as a dog or a cat that weighs less than twenty (20) pounds, small birds such as a parakeets, and small fish such as a gold fish. Unit owners may have one dog, or one cat, or one dog and one cat. Large dogs are prohibited even as puppies. Barking dogs are prohibited. Pets are not to be tethered to ground anchors or other fixed objects. All pets must be leashed at all times when outside. No pets shall be raised for commercial purposes. Owners are responsible for the immediate removal of feces. Owners of pets agree to remove from the premises upon demand any pet determined by the Board to be a nuisance. Renters may not have any pets.

14.4 Automobile Parking Space. Authorized types of motor vehicles means passenger cars, minivans, motorcycles with proper mufflers, SUV^s, pickup trucks up to ¾ ton (open bed pickup trucks must have a covered cargo bed when it contains materials). Authorized vehicles shall not adorn signs or advertising of any kind (dealer names on license plate frames and the like are exceptions). Service vehicles are permitted on the premises during daylight hours only. Both assigned and unassigned parking spaces may only be occupied by authorized types of motor vehicles except that with prior Board authorization boats on trailers, and RV^s may occupy parking spaces for up to 24 hours two (2) times each year for the purpose of arriving and departing for the season. No motor vehicle shall be parked anywhere other than in designated parking areas. Unit Owners must make arrangement to facilitate moving within forty-eight (48) hours of notice by the Association, any vehicle that they have, have had, or have allowed to be parked in either an assigned or unassigned parking space. In case of an emergency the association will move, at the owner's expense, any vehicle that cannot be immediately moved by the owner from either assigned or unassigned parking spaces.

14.5 Boat Slips. Slips may only be occupied by watercraft belonging to Unit Owners or by tenants who are occupying a Unit during the time the watercraft is in a slip. Live-aboards are not permitted at any time. Live-aboard means a vessel is being used as the primary or usual location where its occupants are eating, or sleeping, or cooking, or bathing, or using the toilet facilities. Vessels must be free floating with unobstructed connection to the tidal water. Boatlifts or any similar device, which separates vessels from the tidal water, are prohibited. The Boating Association shall notify and consult with the Association with regard to material changes that it intends to make to slips and/or pilings that are located on Condominium property.

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

15. GUEST OCCUPANCY. A “guest” is defined as a person who enters upon the Condominium Property at the invitation of a Unit Owner, Primary Occupant, or Tenant, (or their respective families) for the purpose of visiting the Unit Owner, Primary Occupant, or tenant (or their respective families), and who occupies the Condominium Unit and/or is utilizing the Condominium Property for less than thirty (30) days during any calendar year. Use or visitation without consideration (payment) distinguishes a guest usage from a tenancy. Guests must comply with all condominium rules and regulations. The Association may restrict or prohibit guest visitation by convicted felons, including but not limited to registered sex offenders and persons who have been convicted of narcotic offenses.

There are various types of guest uses, which are regulated as follows:

15.1 Guests When Unit Owner, Primary Occupant, or Tenant is in Residence. There is no restriction against Non-Overnight Guests, provided that same does not create a nuisance or annoyance to other condominium residents, nor prevent their peaceful enjoyment of the premises. Non-overnight guests shall be entitled to use the Condominium facilities. There is no restriction against Overnight Guests, provided that the Unit Owner, Primary Occupant, or Tenant is in simultaneous residence. Under no circumstances may more than eight (8) person (including the Unit Owner, Primary Occupant, or Tenant, and their Families) sleep overnight in a Unit.

15.2 Guests in the Absence of the Unit Owner, or Primary Occupant. Non-overnight guests are not permitted. However Units may be inspected by caretakers, family members, etc. Family members shall be permitted to use Condominium facilities during such inspections. Overnight guests are permitted subject to the following conditions, and such other rules and regulations as may be deemed necessary to effectuate the residential, non-transient nature of this Condominium:

15.2.1 There is no restriction against Related Overnight Guests occupying the Unit in the Absence of the Owner, or Primary Occupant. For the purpose of this clause, “related” means all persons who are staying in the Unit on an overnight basis, and are related to the Unit Owner, or Primary Occupant by blood, marriage, or adoption. No more than eight (8) persons shall sleep overnight in a Unit.

15.2.2 Non-Related Overnight Guests in the absence of the Owner, or Primary Occupant should be limited to four (4) occupancies per calendar year. No more than eight (8) persons shall sleep overnight in a Unit.

15.3 Guests in the Absence of Tenants. Tenants are not permitted to have overnight guests (related or non-related) occupy the Unit in their absence.

15.4 Additional Board Authority. The Board may promulgate such rules, policies, and procedures as are necessary to implement this Article. In the event that Unit Owners are suspected of circumventing rental restrictions by receiving consideration for occupancies which are held out as guest occupancies, the Association may require proposed guest occupants to submit proof of familial/relationship, an affidavit as to absence of payment for the right to occupy the premises, and the like.

16. LEASING. The lease of a Unit is defined as occupancy of the Unit by any person other than the Unit Owner, whether pursuant to verbal or written agreement, where said occupancy by the non-Owner involves consideration (the payment of money, the exchange of goods or services, or any other exchange of value). The term “leasing” and “renting” shall be used interchangeably for the purpose of this Declaration of Condominium. The term “Tenant” and “Lessee” shall likewise be used interchangeably. All leases must be in writing. No individual rooms may be rented and no transient tenants may be accommodated. “Rent-sharing” and subleasing are prohibited. All leases shall be for a minimum period of thirty (30) days and a maximum of one (1) year. This section shall apply to all Unit Owners, regardless of when the Unit was purchased.

16.1 Tenant Conduct; Remedies. Unit owners shall provide Tenants with a copy of the Declaration of Condominium, Articles of Incorporation, Bylaws, and Rules and Regulations as same may be amended from time to time (the “Condominium Documents”) and shall secure in writing that the Tenant(s) agree to be bound by same. Tenants shall also agree in writing that any violation of the Condominium Documents shall subject the Tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a Tenant, other Unit Occupant, Guest or Invitee fails to abide by the Condominium Documents, the Unit Owner(s) shall be responsible for the conduct of the Tenants, Occupants, Guests and Invitees and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the Tenant. The Unit Owner shall have the duty to bring his Tenant’s conduct (and that of the other Unit Occupants, Guests, and Invitees) into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the Unit Owner fails to bring the conduct of the Tenant into compliance with the Condominium Documents in a manner deemed acceptable by the Association, the Association shall have the authority to act as agent of the Unit Owner to undertake whatever action is necessary to abate the Tenants’ noncompliance with the Condominium Documents (or the other noncompliance of other Occupants, Guests or Invitees), including without limitation the right to institute an action for eviction against the Tenant in the name of the Association in its own right, or as agent of the Unit Owner. The Association shall have the right to recover any costs or fees, including attorney’s fees, incurred in connection with such actions, from the Unit Owner which shall be secured by a continuing lien in the same manner as assessments for Common Expenses, to wit, secured by a lien for Charges.

16.2 Security Deposit. The Board of Directors shall have the authority, to require that a prospective Lessee or Unit Owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the Common Elements or Association Property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2008) as amended from time to time.

16.3 Liability. The liability of the Unit Owner under the Condominium Documents shall continue notwithstanding the fact that he may have leased or rented his interest in the Unit as provided herein.

17. MAINTENANCE OF COMMUNITY INTERESTS. In order to maintain a Community of congenial Unit Owners who are financially responsible, and thus protect the value of the Units, the use and transfer of Units by any Owner shall be subject to the following provisions as long as the Condominium exists upon the land, which provisions each Unit Owner covenants to observe:

17.1 Forms of Ownership:

17.1.1 Ownership by Individuals. A Unit may be owned by one natural person.

17.1.2 Co-Ownership. Co-Ownership of Units may be permitted. If the co-Owners are other than husband and wife or Domestic Partners, they shall designate one natural person as "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant was the only actual Owner. Any changes in the Primary Occupant shall be treated as a transfer of Ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in Primary Occupant will be permitted in any twelve (12) month period. No time share estates may be created. "Fractional Ownership" is prohibited.

17.1.3 Ownership by Corporations, Partnerships, Limited Liability Companies, Trusts, or Other Artificial Entities. A Unit may be owned in trust, or by a corporation, partnership, limited liability company, or other entity which is not a natural person. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Unit may be used as a short-term or transient accommodations for several entities, individuals or families as a timeshare, a shared Unit, fractional Ownership, or used as Guest accommodations for employees, customers, or Guests of Units owned by business entities, religious, or charitable organizations, and the like. The ownership by a partnership, trustee, or corporation, limited liability company, or other entity as a Unit Owner shall be conditioned upon designation by the Owner of one natural person to be the "Primary Occupant." The use of the Unit by other persons shall be as if the Primary Occupant were the only actual Unit Owner. The Primary Occupant shall be the person entitled to vote on behalf of the Unit, and exercise rights of membership. Any change in this Primary Occupant shall be treated as a transfer of Ownership by sale or gift subject to the provisions of the Condominium Documents. No more than one change in designation of Primary Occupant will be permitted in any twelve (12) month period.

17.1.4 Life Estate. A Unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided below. In that event, the life tenant shall be the only Member from such Unit, and occupancy of the Unit shall be as if the life tenant were the only Owner. The life tenant shall be liable for all Assessments and Charges against the Unit. Any vote, consent, or approval required by the Condominium Documents or law may be given by the life tenant alone, and the vote, consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-Owners for purposes of determining voting and occupancy rights.

17.2 Notice to Board of Directors.

17.2.1 Sale or Other Transfer. A Unit Owner intending to make a bona fide sale or other title transfer of his Unit or any interest in it, including gifts, transfers to artificial entities, and the grant of partial estates, shall give to the Board of Directors notice of such intention, together with the name and address of the intended grantee, an executed copy of the purchase contract and its exhibits, or other documentation evidencing the transfer and such other information concerning the intended grantee and the transaction as the Board of Directors may reasonably require.

17.2.2 Devise or Inheritance. A Unit Owner who has obtained his title by devise or inheritance, or operation of succession laws, shall give to the Board of Directors notice of the acquiring of his title, together with such information concerning the Unit Owner as the Board of Directors may reasonably require, and a certified copy of the instrument evidencing the Owner's title.

17.3 Estoppel Fee. The Association or its authorized agent may charge a reasonable fee for the preparation of a certificate, commonly known as an estoppel certificate, stating all assessments and other monies owed to the Association by the Unit Owner with respect to the condominium parcel. The fee for the preparation of such certificate shall be established by a written resolution of the Board or provided for in a management, bookkeeping, or maintenance contract.

17.4 Judicial Sales. Article 17 shall not apply to transfers to a foreclosing first mortgages, or any other person or entity who obtains title through foreclosure of a judgment lien superior to the Association's lien. However, such parties must comply with Article 17 in their transfer to third parties.

17.5 Unauthorized Transactions. Any sale, lease, mortgage or other transfer of Ownership or possession not authorized pursuant to the terms of this Declaration shall be voidable unless subsequently approved by the Association.

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

18.1 Proposal of Amendments. An amendment may be proposed by a majority of the Directors, or by twenty-five percent (25%) of the entire Voting Interests.

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

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

18.4 Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds ($2/3^{\text{rds}}$) of the Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds ($2/3^{\text{rds}}$) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association membership vote.

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

18.6 Automatic Amendment. Whenever Chapter 718, Florida Statutes (2008) Chapter 617, Florida Statutes (2008) or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in this Declaration of Condominium, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors without a vote of the Owners, may adopt by majority vote, amendments to this Declaration of Condominium as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes (2008), or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

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

19. TERMINATION.

19.1 The Condominium may be terminated under any one of the following alternatives:

19.1.1 Termination Because of Economic Waste or Impossibility.

Notwithstanding anything to the contrary in this Declaration, the Condominium form of Ownership may be terminated by a plan of termination approved by the percentage of Voting Interests necessary to amend the Declaration when:

- the total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all Units in the Condominium after completion of the repair; or
- it becomes impossible to operate or reconstruct the Condominium in its prior physical configuration because of land use laws or regulations.

It is the intent of this provision to incorporate Section 718.117(2), Florida Statutes (2008), as amended from time to time.

19.1.2 Optional Termination. Except as provided in Article 19.1.1, the Condominium form of Ownership may be terminated pursuant to a plan of termination approved by at least eighty percent (80%) of the total Voting Interests of the Condominium if not more than ten percent (10%) of the total Voting Interests of the Condominium have rejected the plan of termination by negative vote or by providing written objections thereto. It is the intent of this provision to incorporate the provisions of Section 718.117(3), Florida Statutes (2008), as amended from time to time.

19.1.3 Very Substantial Damage. If the Condominium suffers major damage as defined in Article 13, which shall mean that more than one-half the Units in the Condominium are rendered uninhabitable as determined in the sole discretion of the Board of Directors the Condominium may be terminated if seventy-five percent (75%) of the total Voting Interests in the Condominium vote to approve a plan of termination.

19.1.4 Mortgage Lienholders. Notwithstanding any provision to the contrary in this Declaration or Chapter 718, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel is not required unless the plan of termination would result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to a plan of termination may contest the plan as provided in Sections 718.117(16), Florida Statutes (2008), as amended from time to time.

19.2 Procedures for Termination and Sale. The termination of the Condominium via either of the methods set forth in 19.1.1 through 19.1.3 herein shall be as set forth in Section 718.117(4) – (20), Florida Statutes (2008), as amended from time to time.

19.3 Amendment. This Article 19 may be amended in the same manner in which this Declaration of Condominium may be amended generally, as set forth in Article 18.

20. CONDEMNATION.

20.1 Awards. The taking of all or any part of the Condominium Property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association, and if any fail to do so, a special assessment shall be made against a defaulting Unit Owner in the amount of this award, or the amount of the award shall be set off against any sums payable to that Owner.

20.2 Determination Whether to Continue Condominium. Whether the condominium will be continued after condemnation will be decided in the same manner as repair after casualty as set forth in Paragraph 13 hereof.

20.3 Distribution of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will 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, the size of the Condominium may be reduced. The Owners of condemned Units, if any, will share in awards and special assessments as provided below.

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

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

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

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

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

20.6 Units Not Habitable. If the taking of any entire Unit or so reduces the size of the Unit that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

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

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

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

20.7 Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, may be returned to the Unit Owners or used by the Association as the Board may determine.

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

21. COMPLIANCE AND DEFAULT.

21.1 Duty to Comply; Right to Sue. Each Unit Owner, his Family, Tenants, Guests, Invitees and all Unit Occupants and the Association shall be governed by and shall comply with the provisions of the Condominium Act and the Condominium Documents. Action for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

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02/06/09

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21.1.1 The Association;

21.1.2 A Unit Owner; or

21.1.3 Anyone who occupies a Unit as a Unit Owner, Family member, Tenant, Occupant or Guest. Unit Owners shall be jointly and severally liable for violations of the Condominium Documents by their Family members, Tenants, Guests, Invitees and Unit Occupants.

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

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

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

21.5 Notice of Lien or Suit.

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

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

21.5.3 Failure to Comply. Failure of an Owner to comply with this Section 21.5 will not affect the validity of any judicial suit; however, the failure may render the Owner liable to any party injured by such failure.

22. RECREATIONAL FACILITIES. All Unit Owners in the Boardwalk Caper Project shall have access, use and benefit of the Recreational Facilities which will be maintained and controlled by the Community Services Association (CSA) and are described as follows:

THE RECREATIONAL FACILITIES DESCRIBED IN THIS SECTION ARE COMMON ELEMENTS OF THE BOARDWALK CAPER, A CONDOMINIUM

- (a) Three (3) swimming pools, each 24' x 48', heated. Each pool (pool #1, pool #2 with spa, and pool #3) can accommodate 25 people at anyone time.
- (b) Apx. 1800 running feet of boardwalk

COMPLETED RECREATIONAL FACILITIES ALSO AVAILABLE FOR ACCESS, USE, AND BENEFIT OF THE BOARDWALK CAPER, A CONDOMINIUM, THAT ARE PART OF THE BOARDWALK CAPER PHASE III, A CONDOMINIUM, ARE AS FOLLOWS:

- (a) One (1) heated swimming pool, irregular in shape, totaling 1,800 square feet. The pool capacity is 34 people. (Pool #4 and associated toilet facilities)
- (b) Two (2) tennis courts, 55' X 120' each, of painted asphalt-paved surface with fence enclosures.
- (c) Sports court, 30' X 64', of painted asphalt-paved surface to be used for basketball, badminton, volleyball, paddleball, and other assorted games.
- (d) Two (2) shuffleboard courts of painted concrete surface.
- (e) Apx. 300 running feet of boardwalk.

COMPLETED RECREATIONAL FACILITIES ALSO AVAILABLE FOR ACCESS, USE, AND BENEFIT OF THE BOARDWALK CAPER, A CONDOMINIUM, THAT ARE PART OF THE BOARDWALK CAPER PHASE V, A CONDOMINIUM, ARE AS FOLLOWS:

- (a) One (1) Boating / Meeting Room

COMPLETED RECREATIONAL FACILITIES ALSO AVAILABLE FOR ACCESS, USE, AND BENEFIT OF THE BOARDWALK CAPER, A CONDOMINIUM, THAT ARE PART OF THE BOARDWALK CAPER PHASE VI, A CONDOMINIUM, ARE AS FOLLOWS:

- (a) Apx. 1070 running feet of boardwalk.
- (b) One (1) Community / Meeting Room and restroom
- (c) One (1) Restroom with outside accessibility that is located on the south end of the building

23. VOLUNTARY RIGHT TO JOIN THE BOARDWALK CAPER BOATING ASSOCIATION, INC. The Boardwalk Caper, a Condominium is part of a Condominium project consisting of a maximum of 300 residential units. Each purchaser of a Condominium Unit shall have the option to purchase (to the extent of availability), a right to use a limited number of boat docks or boat slips on the waterfront contiguous to the Condominium development. Purchasers will have the right to buy a right to use such docking facilities subject to the number of docks constructed. In the event a purchaser buys a right to use such docking facilities, then said purchaser specifically agrees to assume his respective obligations, assessments and limitations in connection with membership in The Boardwalk Caper Boating Association, Inc., a corporation not for profit, (Recorded in Official Records Book 1541, Page 578, Public Records of Lee County, Florida) primarily established to assume the obligations required for the maintenance and improvement of the boat docks or slips. To this end, the condominium unit owner upon purchasing a right to use a boat dock or slip obligates himself to membership in said Boardwalk Caper Boating Association, Inc.

24. MISCELLANEOUS PROVISIONS.

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

24.2 Savings Clause. If any provision of the Condominium Documents hereto, as the same now exist or as may be later amended or any portion thereof, shall be held invalid by any Court, or other governmental agency with proper authority to so hold, the validity of the remainder of said Condominium Documents shall remain in full force and effect.

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

24.4 Notices. All notices shall be given as provided in the Bylaws.

24.5 Compliance with Fair Housing Laws. There shall be no limitation upon sale, lease, or occupancy of any Unit based upon race, creed, color, sex, religion, national origin, handicap, or familial status. The Association may make reasonable accommodations, including

reasonable waiver of the covenants and restrictions of the Condominium Documents, when necessary to afford handicapped individuals the opportunity to enjoy the condominium premises, or to comply with other legal requirements.

24.6 Conflicts. In the event of a conflict between any provision of the Condominium Documents and the Condominium Act, the Condominium Act shall control, except in cases where the Act permits the Condominium Documents to regulate the subject, in which case the Condominium Documents will control. In the event of a conflict between this Declaration and the other Condominium Documents, same shall be governed as provided in the Bylaws.

24.7 Interpretation. The Board of Directors shall be responsible for interpreting the provisions of the Condominium Documents. The Board's interpretations shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association's legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the interpretation is valid.

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

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