

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

FILED
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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

These are the Amended and Restated Articles of Incorporation of **Bermuda Cays Condominium Association, Inc.** originally filed with the Florida Department of State on February 9, 1989, under Document #N30587. Amendments included have been adopted pursuant to F.S. 617.1007. There is no discrepancy between the Articles of Incorporation as heretofore amended and these Restated Articles other than the inclusion of these amendments and the omission of matters of historical interest.

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ARTICLE I

The name of this corporation is

BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

ARTICLE II

PURPOSES AND POWERS:

The purpose for which this corporation is organized is to act as the governing association of Bermuda Cays, A Condominium, located in Bonita Springs, Lee County, Florida. It shall have all of the powers permitted to a not-for-profit Florida Corporation together with those set forth in the Condominium Act and the Declaration of Condominium and the Bylaws. The Association's principal address is in care of R&P Property Management, 265 Airport Road S, Naples, Florida 34104.

ARTICLE III

QUALIFICATION OF MEMBERS AND MANNER OF ADMISSION:

The qualification of members and the manner of their admission shall be as follows: Any approved person or persons who hold title in fee simple to a Condominium unit in the Condominium shall by virtue of such ownership be a member of this corporation. Provided however, that transfer of membership shall be made only as a part of and incident to the transfer of ownership of a condominium unit with such transfers being subject to and controlled by the transfer procedures set forth in the Declaration of Condominium. After receiving approval of the Association required by the Declaration of Condominium, change of membership in the Association shall be established by recording in the Public Records of Lee County, Florida, a deed or other instrument establishing record title to a unit in the condominium and the delivery of a certified copy of the recorded instrument to the Association at the time of taking occupancy. The owner designated by such instrument thereby becomes a member of the Association.

ARTICLE IV

TERMS OF EXISTENCE:

The term for which this Corporation is to exist shall be perpetual, unless sooner dissolved pursuant to provisions of Florida Statutes Chapter 617, as amended.

ARTICLE V

DIRECTORS AND OFFICERS:

The affairs of this Corporation shall be managed by a governing Board of five Directors who shall be members of the Association or the spouses of members and who shall be elected at the time and place the Annual Meeting of the Corporation is scheduled to occur, regardless of whether a quorum is present, as provided for in the Bylaws. The officers shall be: a President,

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one or more Vice Presidents, a Secretary, and a Treasurer, and such other assistant officers as the Directors shall decide. They shall be elected by and from the Board of Directors. The officers and members of the Board shall perform such duties, hold office for such terms, and take office at such times as are provided by the Bylaws of the Corporation.

ARTICLE VI

BYLAWS:

The Bylaws of this Corporation may be made, altered, amended or repealed by a majority of the members' voting interests as provided for in the Bylaws.

ARTICLE VII

AMENDMENT OF ARTICLES OF INCORPORATION:

Amendments to these Articles of Incorporation may be proposed and adopted as follows:

An Amendment may be proposed by either the Board of Directors or by twenty-five percent of the voting interests and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the Bylaws, which includes a notice of the substance of the proposed Amendment, or by written agreement as provided for in the Declaration.

The Amendment must be approved by a majority of the members' voting interests.

These Amended and Restated Articles of Incorporation were duly adopted by the required percentage of the membership, which was a sufficient number for approval, on January 20 1998.

Signed this 21st day of January, A.D. 1998.

**BERMUDA CAYS CONDOMINIUM
ASSOCIATION, INC.**

By: Patricia J. Matre
President Patricia J. Matre

By: [Signature]
Secretary

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 21st day of January 1998, by Patricia Watson, President of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced License as identification.



NOTARY PUBLIC:

(Sign) Patricia Crockett

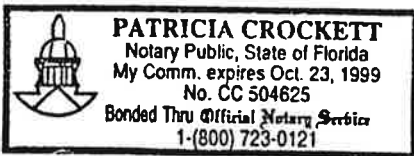
(Print) Patricia Crockett
State of Florida at Large (Seal)
My Commission Expires
10-23-99

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STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 21st day of January 1998 by John DeMarco, Secretary of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced License as identification.



NOTARY PUBLIC:

(Sign) Patricia Crockett

(Print) Patricia Crockett
State of Florida at Large (Seal)
My Commission Expires
10-23-99

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PREPARED BY:
RICHARD D. DeBOEST, ESQ.
ATTORNEY AT LAW
POST OFFICE BOX 1470
FORT MYERS, FL 33902
Tel: (941) 334-1381

CERTIFICATE OF ADOPTION

THE UNDERSIGNED being President of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, does hereby certify that the attached Amended and Restated Declaration, Amended and Restated Articles of Incorporation, Amended and Restated By-laws and Rules and Regulations of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., as recorded in O.R. Book 2075, Page 2312, of the Public Records of Lee County, Florida were duly adopted and ratified at a meeting of the Association held on the 20th day of January, 1998, by the required percentage of the voting interests of Bermuda Cays Condominium Association, Inc.

Dated this 30th day of January, 1998.

WITNESSES:

Herb Solomon
(Sign) Witness #1
Herb Solomon
(Print) Witness #1
Michelle Adams
(Sign) Witness #2
Michelle Adams
(Print) Witness #2

BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

By: Patricia J. Matre
Patricia J. Matre
President
3871 Windward Passage
Bonita Springs, Florida 34134

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 30th day of January, 1998, by Patricia J. Matre, President of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., who is personally known to me or has produced Passport as identification.

NOTARY PUBLIC:

Sign: Terri L. Crockett

Print: _____

STATE OF FLORIDA AT LARGE (SEAL)
My Commission Expires:

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: TRENT A. VOGES, D.C.

8181910767M

PREPARED BY:
RICHARD D. DeBOEST, ESQ.
ATTORNEY AT LAW
POST OFFICE BOX 1470
FORT MYERS, FL 33902
Tel: (941) 334-1381

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

OF

BERMUDA CAYS, A CONDOMINIUM

BONITA SPRINGS, LEE COUNTY, FLORIDA

SUBSTANTIAL REWORDING OF DECLARATION, SEE ORIGINAL

DECLARATION FOR ORIGINAL TEXT

1. **RECITAL** — This Condominium was established by Declaration dated March 8, 1989 and recorded June 8, 1989 in O.R. Book 2075, Page 2312, Public Records of Lee County, Florida and amendments thereto.

Submission of the land to the condominium form of ownership by that Declaration and amendments thereto and easements therein created remain effective as do the following Exhibits to that Declaration which are recorded in the Lee County Public Records and which consist of the surveyor's plat, apartment (unit) plans, ground floor plans, elevations and surveyors certificate: A, B, C, D and E. Hereafter these will be referred to as (Composite) Exhibit "B" to this Amended and Restated Declaration. Except as to the provisions noted, this Declaration supersedes and replaces the original and all amendments.

2. **PLAN OF DEVELOPMENT** — Bermuda Cays, a Condominium contains 96 units in twenty-four four unit buildings on the lands submitted to the condominium ownership.

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3. **NAME — ASSOCIATION** — The name of the Condominium Association is “Bermuda Cays Condominium Association, Inc.” This Association is incorporated as a non-profit Florida corporation.

4. **DEFINITIONS** — The terms used herein will have the meanings stated in Florida Statutes Chapter 718 (Condominium Act) and as follows, unless the context otherwise requires:

4.1. **ASSESSMENTS** — The share of the funds required for the payment of common expenses that is assessed against a unit owner from time to time.

4.2. **ASSOCIATION** — The corporation responsible for the operation of the Condominium.

4.3. **ASSOCIATION PROPERTY** — All real or personal property owned or leased by the Association.

4.4. **BERMUDA ISLES AND CAYS SWIM AND RACQUET CLUB** — The facilities consisting of two swimming pools, decks, cabana/club houses and a tennis court administered by the non-profit Bermuda Isles and Cays Swim and Racquet Club, Inc. of which unit owners are members and must pay assessments pursuant to the membership agreement recorded in O.R. Book 2075, Page 2273, Public Records of Lee County, Florida.

4.5. **BOARD OF DIRECTORS or DIRECTORS or BOARD** — The Board of Directors responsible for the administration of the Association.

4.6. **CHARGE or SPECIAL CHARGE** — The obligation of a unit owner to pay or reimburse money to the Association that cannot be secured as an assessment pursuant to

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F.S. 718.116, but which will, if the charge is not paid, give rise to a cause of action against the unit owner pursuant to this Declaration.

4.7. COMMON ELEMENTS — The portions of the property submitted to condominium ownership and not included in the units including:

- 4.7.1. Land
- 4.7.2. All parts of improvements that are not included within the units
- 4.7.3. Easements
- 4.7.4. Installations for the furnishing of services to more than one unit or to the common elements, such as electricity, water, and sewer.

4.8. COMMON EXPENSES — All expenses and assessments properly incurred by the Association for the Condominium administered by the Association and such expenses as may be declared to be common expenses by this Declaration or the By-Laws. The cost of providing basic cable television under a bulk service contract, and the cost of electronic security may be common expenses. The cost of water and sewer services to the units shall be common expenses.

4.9. COMMON SURPLUS — The excess of all receipts of the Association above the common expenses.

4.10. CONDOMINIUM DOCUMENTS — This Declaration and the attached exhibits setting forth the nature of the property rights in the Condominium and the covenants running with the land that govern these rights. All other Condominium documents will be subject to the provisions of the Declaration. The order of priority of the documents will be as

follows: (1) Declaration; (2) Association Articles of Incorporation; (3) By-Laws; and (4) Rules and Regulations.

4.11. CONDOMINIUM PARCEL — A unit together with the undivided share in the common elements which is appurtenant to the unit.

4.12. CONDOMINIUM PROPERTY — The real and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous; all improvements thereon; and all easements and rights appurtenant thereto.

4.13. DEVELOPER — SHELLTEX MARKETING, INC. (original Developer) and CITATION PROPERTIES, LTD. (Successor Developer) that developed this Condominium.

4.14. EXHIBITS:

- A. Association Articles of Incorporation
- B. Condominium Plot Plans
- C. Association By-Laws
- D. Rules and Regulations

4.15. FAMILY — One natural person or a group of two or more natural persons, each of whom is related to each of the others by blood, marriage, or adoption (exclusive of household employees); or not more than two adult persons not so related, and the child or children of either or both of them, who reside together as a single not-for-profit housekeeping unit.

4.16. GUEST — Any person who is physically present in or occupies a unit on a temporary basis at the invitation of the unit owner without the payment of consideration.

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4.17. INSTITUTIONAL FIRST MORTGAGEE — The mortgagee or its assignee of a first mortgage on a condominium parcel. The mortgagee may be a bank, a savings and loan association, a mortgage banker, a life insurance company, a real estate or mortgage investment trust, a pension or profit sharing trust, the Federal Housing Administration, the Department of Veterans Affairs, any agency of the United States of America. The term also refers to any holder of a first mortgage against a condominium parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument, by the Federal Housing Administration, the Department of Veterans Affairs, any agency of the United States of America, or any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans and their successors and assigns.

4.18. LEASE — The grant by a unit owner of a temporary right of use of the owner's unit for a valuable consideration.

4.19. LIMITED COMMON ELEMENTS — Those portions of the common elements that are reserved for the use of a certain unit or units to the exclusion of the other units.

4.20. OCCUPY— The act of being physically present in a unit on two or more consecutive days, including staying overnight. An occupant is one who occupies a unit.

4.21. OPERATION — The administration and management of the Condominium property.

4.22. PERSON — An individual, corporation, trust, or other legal entity capable of holding title to real property.

4.23. SINGULAR, PLURAL, GENDER — Whenever the context permits, use of the plural includes the singular, use of the singular includes the plural, and use of any gender includes all genders.

4.24. UNIT — A part of the Condominium property that is subject to exclusive ownership as described in this Declaration.

4.25. UNIT NUMBER — The number that is designated on the Condominium Plot Plan (Exhibit "B") and is used as the identification of a unit.

4.26. UNIT OWNER — The owner of record legal title to a condominium parcel.

4.27. VANDERBILT LAKES — The planned unit development within which Bermuda Cays is located.

4.28. VANDERBILT COMMUNITY SERVICES ASSOCIATION, INC. — The non-profit Florida corporation which administers the Declaration of Covenants, Conditions and Restrictions of Vanderbilt Lakes recorded in O.R. Book 1797, Page 725 and Amendments thereto, Lee County, Florida Public Records, and the Declaration of Covenants, Conditions and Restrictions of the Vanderbilt Wastewater Treatment Area recorded in O.R. Book 1797, Page 680 and amendments thereto, Lee County, Florida Public Records.

4.29. VOTING INTEREST — The voting rights distributed to the Association members pursuant to F.S. 718.104(4)(i).

5. CONDOMINIUM UNITS, BOUNDARIES, AND APPURTENANCES — Each unit and its appurtenances constitute a separate parcel of real property that may be owned in fee simple. The unit may be conveyed, transferred, and encumbered like any other parcel of real

property, independently of all other parts of the Condominium property, subject only to the provisions of the condominium documents and applicable laws.

5.1. BOUNDARIES — Each unit will have boundaries as defined below. The boundaries may exist now or may be created by construction, settlement, or movement of the buildings; or by permissible repairs, reconstruction, or alterations.

5.1.1. HORIZONTAL BOUNDARIES — The upper and lower boundaries of the units will be:

5.1.1.1.A. UPPER BOUNDARY FIRST FLOOR UNITS — The planes of the underside of the lower surfaces of the ceiling of the unit, extended to meet the perimeter boundaries.

5.1.1.1.B. UPPER BOUNDARY SECOND FLOOR UNITS — The planes of the underside of the drywall forming the unit ceiling.

5.1.1.2. LOWER BOUNDARY — The plane of the unfinished upper surfaces of the concrete floor of the unit, extended to meet the perimeter boundaries.

5.1.2. PERIMETER BOUNDARIES — The perimeter boundaries shall be the exterior surface of the plasterboard walls of the unit, the planes of the interior surfaces of the unit’s windows, doors, frames and other openings that abut the exterior of the building or common elements all extended to meet the unit’s upper and lower boundaries.

5.1.3. UNIT STAIRWAYS — The airspace contained within stairways serving only one unit is part of the unit, but their structure is common elements.

5.2. EXCLUSIVE USE — Each unit owner will have the exclusive use of such owner's unit.

5.3. OWNERSHIP — The ownership of each unit will carry with it, as appropriate, and whether or not separately described, all of the rights, title, and interest of a unit owner in the Condominium property which will include, but not be limited to:

5.3.1. COMMON ELEMENTS AND COMMON SURPLUS — An undivided share of ownership of the common elements and common surplus.

5.3.2. LIMITED COMMON ELEMENTS — Either the exclusive use or use in common with one or more other designated units of the limited common elements that may exist. Such elements include unit parking spaces, balconies and lanais and all items set forth in Section 6 that are exterior to a unit and are expressly required to be maintained by the unit owner. The Board of Directors may adopt a uniform plan for enclosing screened balconies and lanais and owners may, at their own expense, enclose their balconies or lanais in conformity with such a plan. The enclosure of a balcony or lanai does not change its status as a limited common element.

5.3.3. ASSOCIATION MEMBERSHIP — Membership in the Association and voting rights.

5.4. EASEMENTS — The following easements in the original Declaration of Condominium are retained and non-exclusive easements from the Association to each unit owner; to the Association and their employees, agents and hired contractors; to utility companies; to unit owners' families in residence, guests, and invitees; and to governmental and emergency services (as applicable) are hereby granted and created.

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5.4.1. EASEMENT FOR AIR SPACE — An exclusive easement for the use of the air space occupied by the unit as it exists at any particular time and as the unit may be lawfully altered or reconstructed from time to time. The easement will be terminated automatically in any air space that is vacated from time to time.

5.4.2. INGRESS AND EGRESS — Easements over the common elements and Association properties for ingress and egress to units and public ways.

5.4.3. MAINTENANCE, REPAIR, AND REPLACEMENT — Easements through the units, common elements and Association properties for maintenance, repair and replacement.

5.4.4. UTILITIES — Easements through the units, common elements and Association properties for conduits, ducts, plumbing and wiring and other facilities for the furnishings of services and utilities to other units, the common elements and other utility customers, both existing and future.

5.4.5. PUBLIC SERVICES — Access to the Condominium property and Association property and the units for lawfully performed emergency, regulatory, law enforcement, and other public services.

5.4.6. BERMUDA ISLES AND CAYS SWIM AND RACQUET CLUB MEMBERS — Easements over the Condominium property for ingress and egress to the club facilities.

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

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

- 6.1.1.** Electrical wiring up to the circuit breaker panel in each unit.
- 6.1.2.** Water pipes, up to ~~but not~~ ^{and} including the individual unit cut-off valve within the unit (if any).
- 6.1.3.** Cable television lines up to the wall outlets in the units.
- 6.1.4.** Air conditioning condensation drain lines, up to the point where they enter each unit.
- 6.1.5.** Sewer lines, up to the point where they enter the unit.
- 6.1.6.** All installations, fixtures and equipment located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- 6.1.7.** The exterior surface of the main entrance doors to the units.
- 6.1.8.** All exterior building walls, including painting.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its

condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title or for damage to paint, wallpaper, paneling, flooring, tile or carpet which, of necessity, must be cut or removed to gain access to work areas located above, behind or beneath them.

6.2. UNIT OWNER MAINTENANCE— Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

6.2.1. Maintenance, repair and replacement of screens, windows and window glass and caulking and waterproofing of windows and window frames.

6.2.2. The main entrance door to the unit and its interior surfaces and unit screen doors (if any).

6.2.3. All other doors within or affording access to the unit.

6.2.4. The electrical, mechanical and plumbing lines, pipes, fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit or serving only the unit.

6.2.5. The circuit breaker panel and all electrical wiring going into the unit from the panel.

6.2.6. Appliances, water heaters, smoke alarms and vent fans.

6.2.7. All air conditioning, and heating equipment, thermostats, ducts and installations serving the unit exclusively, except as otherwise provided in Section 6.4. below.

6.2.8. Carpeting and other floor coverings.

6.2.9. Door and window hardware and locks.

6.2.10. Shower pans.

6.2.11. The main water supply shut-off valve for the unit.

6.2.12. Other facilities or fixtures which are located or contained entirely within the unit and serve only the unit.

6.2.13. All interior partition walls which do not form part of the boundary of the unit.

6.2.14. As to those units having private gated entrance courtyards, the interior of the courtyards including plantings.

6.3. OTHER UNIT OWNER RESPONSIBILITIES -

6.3.1. BALCONIES AND LANAIS — Where the unit includes a balcony or lanai, the unit owner shall be responsible for the day-to-day cleaning and care of the walls (including screens and frames), floor and ceiling bounding said area, if any; and all fixed glass and sliding doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the buildings and the concrete slabs. The unit owner shall be responsible for day-to-day cleaning and care, but all painting and maintenance of the exterior surfaces and structures of the buildings shall be the responsibility of the Association and shall be a common expense. The maintenance, repair, replacement and insurance of approved floor, covering or enclosure shall be the responsibility of the unit owner.

6.3.2. INTERIOR DECORATING—Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtain, lamps and other light fixtures, and other furnishings and interior decorating.

6.3.3. FLOORING—All second floor units shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms, foyers or balconies. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality equivalent or superior to 1/4th inch cork and perimeter sound isolation material installed in accordance with the Rules and Regulations as amended from time to time so as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to any such installation. If the installation is made without prior approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner. The structural integrity of balconies constructed of steel reinforced concrete is adversely affected by water intrusion and rusting aggravated by the water retention qualities of indoor-outdoor carpet, river rock and unglazed ceramic tile and its grout. For this reason no indoor-outdoor carpet or river rock may be used on balconies and all tile and its bedding and grout must be of such materials and so applied as to be waterproof. Any flooring installed on the balconies of a unit shall be installed so as to insure proper drainage.

6.3.4. WINDOW COVERINGS— The covering and appearance of the windows and doors, whether by draperies, shades or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be such that the only color visible from outside the unit is white or a nearly white neutral color.

6.3.5. MODIFICATIONS AND ALTERATIONS OR NEGLIGENCE—If a unit owner makes any modifications, installations or additions to his unit, limited common elements or the common elements or neglects to maintain, repair and replace as required by this Section 6, the unit owner, and his successors in title, shall be financially responsible for:

6.3.5.1. Insurance, maintenance, repair and replacement of the modifications, installations or additions;

6.3.5.2. The costs of repairing any damage to the common elements or other units resulting from the existence of such modifications, installations or additions; and

6.3.5.3. The costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Condominium property for which the Association is responsible.

6.3.4. USE OF LICENSED AND INSURED CONTRACTORS — Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

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6.4. APPLIANCE MAINTENANCE CONTRACTS — If there shall become available to the Association a program of contract maintenance for water heaters serving individual units, and/or air-conditioning compressors and/or air handlers and related equipment and fixtures serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests of the Condominium present, in person or by proxy and voting at a meeting called for the purpose, or upon agreement by a majority of the total voting interests of the Condominium in writing, the Association may enter into such contractual undertakings. The expenses of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

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

6.6. OWNER ALTERATION OF COMMON ELEMENTS RESTRICTED
— No unit owner may make any alterations, add to, or remove any part of the portions of the improvements that are to be maintained by the Association without the prior written approval of the

Board of Directors. The Board has the authority to approve, disapprove, or require modifications to the proposed work. The Board's decision will be determinative of the matter. The owner must obtain all necessary approvals and permits from applicable government entities. The Association may require approval from engineers or other professionals as a prerequisite. The entire expense must be borne by the owner, including any subsequent maintenance and restoration. No owner will do any work that would jeopardize the safety or soundness of the building or impair any easements. If approved by the Board, two units owned by the same owner that are adjacent horizontally or vertically, may be connected by doorways or stairways through common element walls or floors. Such Board approved work is declared not to constitute material alterations or substantial additions to the common elements.

7. COMMON ELEMENTS

7.1. SHARE OF — The common elements will be owned by the unit owners in undivided shares of 1/96th of the whole per unit (equal shares).

7.2. USE — Each unit owner and the Association will be entitled to use the common elements in accordance with the purposes for which the elements are intended; however, no such use may hinder or encroach upon the lawful rights of other unit owners.

7.3. MATERIAL ALTERATIONS AND ADDITIONS — Except for changes made by an owner with Association approval as provided in Section 6.6. above, or by the Board of Directors alone for the integrity of the Condominium property, material alteration of or substantial additions to the common elements or to Association property including the purchase, acquisition, sale, conveyance, or mortgaging of such property may be effectuated only by vote of a majority of the voting interests of the Association at a meeting called for that purpose. The Board of Directors

may lease or grant easements or licenses for the use of common elements or Association property if the use will benefit the members of the Association and may charge for such use.

8. FISCAL MANAGEMENT — The fiscal management of the Condominium including budget, fiscal year, charges, assessments, and collection of assessments shall be as set forth herein and in the By-laws (Exhibit C).

9. ADMINISTRATION — The administration of the Condominium shall be by the Board of Directors and its powers and duties shall be as set forth herein and in the Articles of Incorporation and the By-Laws.

10. INSURANCE — In order to adequately protect the unit owners, the Association, and all parts of the Condominium property and Association property that are required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

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

10.2. BASIC INSURANCE — The Board will procure insurance covering the buildings and improvements as well as all insurable Association property, in an amount determined annually by the Board of Directors. Pursuant to F. S. 718.111(11)(b) the word "building" does not include floor coverings, wall coverings, ceiling coverings nor electrical fixtures, appliances, air

conditioning or heating equipment, water heaters or built-in cabinets located within a unit. Such insurance shall afford the following protection:

10.2.1. PROPERTY — The policy must include replacement cost coverage for loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.

10.2.2. FLOOD — The policy may include up to the replacement cost for the building and insurable improvements, as available.

10.2.3. LIABILITY — The policy must include premises and operations liability endorsements for bodily injury and property damage in such limits of protection and with such coverage as required by the Board of Directors of the Association, with cross liability endorsements to cover liabilities of the unit owners as a group to a unit owner.

10.2.4. AUTOMOBILE — The policy must include automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles used in Association business in such limits of protection and with such coverage as may be required by the Board of Directors of the Association.

10.2.5. WORKERS' COMPENSATION — The Association shall maintain worker's compensation insurance to meet the requirements of law.

10.2.6. FIDELITY BONDING — The Association shall obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks and the President, Secretary and Treasurer of the Association in an amount not less than \$10,000.00 for each such person, but in no event less than the minimum required by the Condominium Act from time to time. The Association shall bear the cost of bonding.

10.2.7. DIRECTORS AND OFFICERS LIABILITY INSURANCE —

The Association shall obtain and maintain adequate Directors and officers liability insurance utilizing the broad form of policy coverage for all Directors and officers and, if available, committee members of the Association.

10.2.8. OPTIONAL COVERAGE —

The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interests of the Association and unit owners.

10.3. DESCRIPTION OF COVERAGE —

A detailed summary of the coverage included in the master policies shall be available for inspection by unit owners upon request.

10.4. WAIVER OF SUBROGATION —

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

10.5. SHARES OF INSURANCE PROCEEDS —

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

10.5.1. COMMON ELEMENTS —

Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

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

10.5.3. MORTGAGEES — If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests may appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units except to the extent that insurance proceeds exceed the actual costs of repair or restoration of the damaged improvements, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The Association shall pay all policy deductible amounts on Association policies.

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

10.6.1. COST OF RECONSTRUCTION OR REPAIR — If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall first be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be retained by to the Association.

10.6.2. 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 proceeds after expenses shall be distributed to the beneficial owners. The remittances to unit owners and their mortgagees shall be payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

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

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

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

11.2. DAMAGE TO COMMON ELEMENTS — LESS THAN “VERY SUBSTANTIAL” — Where loss or damage occurs to the common elements, but the loss is less than “very substantial”, as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss, and the following procedures shall apply:

11.2.1. ESTIMATES — The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of reconstruction and repair, and shall negotiate and contract for the work.

11.2.2. INSURANCE INSUFFICIENT — If the net proceeds of insurance plus available reserves are insufficient to pay for the cost of reconstruction and repair of the

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common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for reconstruction and repair of the property.

11.2.3. “VERY SUBSTANTIAL” DAMAGE — As used in this Declaration, the term “very substantial” damage shall mean loss or damage whereby 3/4ths or more of the total units are rendered uninhabitable. Should such “very substantial” damage occur, then:

11.2.3.1. OWNERS' MEETING — A meeting of the Association shall be called by the Board of Directors to be held within a reasonable time after the casualty. A determination by the Board of Directors as to what is a reasonable time shall be conclusive. The purpose of the meeting shall be to determine the wishes of the membership with reference to reconstruction or termination of the Condominium, subject to the following:

11.2.3.1.1. INSURANCE SUFFICIENT — If the insurance proceeds and reserves available for reconstruction and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the Condominium property shall be reconstructed or repaired unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of units, in which case the Condominium shall be terminated pursuant to Section 16.2.

11.2.3.1.2. INSURANCE INSUFFICIENT — If the insurance proceeds and reserves available for reconstruction and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless at least 67% of the voting interests in this Condominium vote in favor of such special assessment and against termination of

the Condominium, it shall be terminated pursuant to Section 16.2. If 67% of the voting interests in this Condominium approve the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate and contract for such reconstruction and repairs. The special assessment shall be added to the proceeds of insurance and reserves available for reconstruction and repair of the property.

11.2.4. DISPUTES — If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

11.3. APPLICATION OF INSURANCE PROCEEDS — It shall be presumed that the first monies disbursed for reconstruction and repair shall be from the insurance proceeds and they shall first be applied to reconstruction of the common elements and Association property and then to the units; if there is a balance in the funds held by the Association after the payment of all costs of reconstruction and repair, such balance shall be retained by the Association. However, if special assessments were made pursuant to Section 11.2.3.1.2.. hereof, then all or a part of the remaining money shall be returned to the unit owners paying said assessments pro-rata, according to the amount each paid, up to the full amount each paid, and then to the Association.

11.4. EQUITABLE RELIEF — In the event of substantial damage to the Condominium property, and if the property is not reconstructed or repaired within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that reconstruction or repair has occurred within a reasonable period of time if substantial work is commenced within such time following the damage or destruction as is

determined by the Board of Directors to be reasonable and the work proceeds without intentional and unwarranted delay to completion.

11.5. PLANS AND SPECIFICATIONS — Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or in lieu thereof, according to plans and specifications approved by the Board of Directors and by the owners of a majority of the voting interests of the Condominium.

12. USE RESTRICTIONS — The use of the property of the Condominium shall be in accordance with the Rules and Regulations attached hereto and incorporated herein as Exhibit "D" and the following provisions:

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

12.2. RULES AND REGULATIONS — The Rules and Regulations attached hereto as Exhibit "D" and made a part hereof by reference concerning the use of the Condominium property including the units may be amended from time to time by the Board of Directors. Copies of the regulations and amendments shall be furnished by the Association to all unit owners. No new or amended regulation may be enforced prior to distribution to the owners. Changes in the Rules and Regulations must be recorded in the Public Records.

12.3. USE AND OCCUPANCY OF THE UNITS is restricted to one family and their guests per unit only. No more than 5 persons may occupy 2 bedroom units and no more than

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6 persons may occupy 3 bedroom units. These use restrictions shall not be construed in such a manner as to prohibit a unit owner from maintaining his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business or professional telephone calls or correspondence in and from his unit. Such uses are expressly declared customarily incident to the principal residential use. All guests must be registered with the Association upon arrival and unregistered guests may be denied use of recreational facilities and amenities.

12.4. ACCESS TO UNITS — The Association has an irrevocable right of access to the units during reasonable hours when necessary for the purpose of maintenance, repair and replacement of the common elements or of any portion of a unit to be maintained by the Association pursuant to this Declaration or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units. The owner of a unit has a right of access, through the Association, to any adjoining unit as and if it is reasonably necessary in order to maintain, repair or replace parts of the owner's unit. The right of access to a unit shall be exercised after reasonable notice to the unit owners, unless such notice is not possible or practical under the circumstances, and with due respect for the occupants' rights to privacy and freedom from unreasonable annoyance, with reasonable precautions to protect the personal property within the unit. The Association requires and shall retain a pass-key to all units. No unit owner shall install or alter any lock that prevents access while the unit is unoccupied without providing the Association with a key.

12.5. PARKING — Each unit shall always have the exclusive use of one assigned covered parking space.

12.6. PETS — TENANTS AND GUESTS — Two dogs (not taller than 15 inches at the shoulder at maturity) or two cats (or one dog and one cat) and no more than 2 birds, tropical fish and other customary non-exotic (snakes are prohibited) quiet and inoffensive household pets not being kept or raised for commercial purposes shall be permitted. Please see also the Rules and Regulations (Exhibit "D"). Tenants and guests shall not be permitted to have pets.

12.7. NUISANCES PROHIBITED — No person shall engage in any practice, exhibit any behavior nor permit any condition to exist that will constitute a nuisance or become a reasonable source of annoyance or disturbance to any occupant of the Condominium.

13. LEASE, CONVEYANCE, DISPOSITION — The purpose and object of this Section is to maintain a quiet, tranquil, non-transient and single-family oriented atmosphere with the residents living in compatible coexistence with other financially responsible persons who are of like-mind and acceptable both in character and comportment. This objective is considered to be both important and justified because of the necessity of sharing facilities and because of the large personal financial investment of each owner. Therefore, the lease, conveyance, disposal and financing of the units by owners (subject to the exceptions provided in Section 17.1) shall be subject to the following provisions:

13.1. ASSOCIATION APPROVAL REQUIRED — No owner may sell, lease, give or otherwise transfer ownership of a unit or any interest therein in any manner without the prior written approval of the Association. The approval shall be a written instrument in recordable form (except for leases) which shall include, without limitation, the nature of the transfer (sale, lease, etc.), the parties to the transaction (sellers, purchasers, etc.), the unit number, the name of the Condominium and the Official Record Book (O. R. Book) and Page numbers in which this

Amended and Restated Declaration is recorded. For all unit transfers of title the approval must be recorded simultaneously in the Lee County, Florida Public Records with the Deed or other instrument transferring title to the unit.

13.1.1. DEVISE OR INHERITANCE — If any unit owner shall acquire title by devise or inheritance or in any other manner not heretofore considered, the continuance of his ownership shall be subject to the approval of the Association. Such owner shall give the Association notice of the acquiring his title together with such additional information concerning the unit owner as the Association may reasonably require together with a copy of the instrument evidencing the owner's title. If such notice is not given, the Association at any time after receiving knowledge of such transfer, may approve or disapprove the transfer of ownership.

13.1.2. LEASES — Approvals of leases need not be recorded. Only entire units may be leased and may not be sub-leased. All leases must provide, and if they do not, shall be deemed to provide the agreement of the lessee(s) to abide by all of the Covenants of the Condominium documents and that a violation of the documents is a material breach of the lease and is grounds for damages, termination and eviction and that the lessee and the owner agree that the Association may proceed directly against such lessee(s) and that the lessee(s) shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. If such costs and fees are not immediately paid by the lessee(s), the unit owner shall pay them and such funds shall be secured as a charge. Each unit owner irrevocably appoints the Association as owner's agent authorized to bring actions in owner's name and at owner's expense including injunction, damages, termination and eviction. The Rules and Regulations must be provided to the lessee(s) by or on the behalf of the unit owner at or before the commencement of the lease term.

The minimum leasing period is 60 days and units may not be leased more frequently than 3 times per calendar year. During periods that the lessee and all his family are absent, no other person or persons may occupy the unit.

13.2. APPROVAL PROCEDURE — The approval of the Association shall be obtained as follows:

13.2.1. WRITTEN NOTICE — Not later than 15 days before the transfer of ownership occurs, or the first day of occupancy under a lease, legal written notice shall be given the Association by the owner of his intention to sell or transfer his interest in any fashion. The notice shall include the name and address of the proposed acquirer and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. If a trust or corporation is the intended purchaser, the names and addresses of all beneficiaries of the trust or of all principals of the corporation must be provided to the Association. Any changes in principals or beneficiaries any time subsequent to the sale, must be presented to the Association in writing. The Association may require such other and further information as it deems reasonably necessary and may impose a transfer fee not to exceed \$100.00 or as permitted by law from time to time.

13.2.2. ASSOCIATION'S OPTIONS — The Association must, within 15 days after receipt of all the information required above, either approve, disapprove for cause, or, except in the case of disapproval for cause, upon the written demand of the owner, furnish an alternate purchaser it approves or the Association may itself elect to purchase, and the owner must sell to such alternate or to the Association upon the same terms set forth in the proposal given the Association or the owner may withdraw his proposed sale. In exercising its power of disapproval the Association must act in a manner that is neither arbitrary nor unlawfully discriminatory and

withhold approval only for a reason or reasons rationally related to the protection, preservation and proper operation of the Condominium and the purposes as set forth at the beginning of this Section 13. If the Association fails or refuses within the allotted time to notify the owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or make an election to purchase the unit itself when required to do so, then the Association shall conclusively be presumed to have approved the transaction, and the Association shall, upon demand, provide a recordable certificate of approval;

13.2.3. CLOSING DATE — The sale shall be closed within 60 days after an alternate purchaser has been furnished or the Association has elected to purchase;

13.2.4. NOTICE OF DISAPPROVAL — If the Association disapproves the proposed transaction (subject to the qualifications contained in Section 13.2.2.) notice of disapproval shall be promptly sent in writing to the owner or interest holder, and the transaction shall not be made. The Association need not approve any sale, transfer or lease until such time as all unpaid assessments and all court costs and attorneys fees (if any) incurred by the Association and due and owing for the unit have been paid;

13.3. JUDICIAL SALES — are exempt from this Section.

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

14. COMPLIANCE AND DEFAULT — Each unit owner, each tenant and other invitee shall be governed by, and shall comply with the provisions of, the Condominium Act as

amended from time to time, this Declaration, including its exhibits, the Association Articles of Incorporation and the Association By-laws.

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

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

14.3. OWNER — When a unit owner files a written inquiry by certified mail with the Board of Directors, the Board shall respond in writing to the unit owner within 30 days of the receipt of the inquiry. The Board's response shall either give a substantive response, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Bureau of Condominiums. If the Board requests advice from the Bureau of Condominiums, the Board shall, within 10 days of receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the Board shall, within 60 days of the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to act as above set forth precludes the Association from recovering attorney's fees and costs in any subsequent litigation, administrative proceedings, or arbitration arising out of the inquiry. If unresolved, a dispute as defined in F.S. 718.1255(1) must be arbitrated in mandatory non-binding arbitration proceedings prior to commencing litigation. The Board of Directors may adopt reasonable Rules and Regulations governing the frequency and manner of responding to unit owner inquiries, including a limit of one unit owner inquiry in any 30 day period.

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

15. AMENDMENTS — Amendments to any of the Condominium documents shall be in accordance with the following:

15.1. REQUIREMENTS — An Amendment may be proposed either by the Board of Directors or by 25% of the voting interests of the Condominium, and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association that it has been enacted by the affirmative vote of the required percentage of the voting interests (which vote may include later written approval of voters not present), and the separate written joinder of mortgagees where required and shall include the recording data identifying the location of the Declaration as originally recorded and which shall become effective when recorded in the public records;

15.2. CORRECTORY AMENDMENT — Whenever it shall appear that there is a defect, error or omission in any of the Condominium documents or in order to comply with applicable laws or requirements of government entities, the amendment may be adopted by the Board of Directors alone;

15.3. REGULAR AMENDMENTS — Amendments may be enacted by a favorable vote of the owners of a majority of the voting interests in the Condominium;

15.4. MERGER AMENDMENT — In the event that this Condominium should desire to merge with one or more other Condominiums it may do so upon the affirmative vote of 75% of the voting interests in this Condominium and the approval of all record owners of liens;

15.5. MORTGAGEE APPROVAL — Amendments materially affecting the rights or interests of mortgagees must have the approval of the holders of institutional first mortgages of record representing 51% of the votes of units subject to such mortgages who have requested the Association to notify them on any proposed action specified in this Section. Implied approval shall be assumed when such holder fails to respond to any written request for approval within 30 days after the mortgage holder receives proper notice of the proposal provided the notice was delivered certified or registered mail, with a "Return Receipt" requested. In the event that mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the Association and recorded in the Public Records of Lee County, Florida. A change to any of the following shall be considered as material:

- any change in the proportion or percentage by which the owner of the unit shares the common expenses and owns the common surplus.
- reallocation of interests or use rights in the common elements;
- redefinition of any unit boundaries;
- convertibility of units into common elements or vice versa;
- expansion or contraction of the Condominium.

15.6. WRITTEN AGREEMENTS — Any approval of unit owners on any matter called for by this Declaration, its Exhibits or any statute to be taken at a meeting of unit

owners is hereby expressly allowed to be taken instead by written agreement, without a meeting (which agreement may be in counterparts), subject to F.S. 718.112(2)(d)(4).

16. TERMINATION — Except for termination in connection with a merger of this Condominium with another, as provided for in Section 15.4. above, the termination of the Condominium shall be carried out in accordance with the following:

16.1. BY AGREEMENT — The Condominium may be caused to be terminated at any time by written agreement of the owners of the units holding at least 75% of the voting interests in the Condominium, and of the holders of institutional first mortgages as provided for in Section 15.5. above.

16.2. WITHOUT AGREEMENT, ON ACCOUNT OF VERY SUBSTANTIAL DAMAGE — If the Condominium suffers “very substantial damage” to the extent defined in Section 11.2.3. above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

16.3. PROCESS OF TERMINATION — Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Lee County, Florida.

16.3.1. The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The Certificate shall also include the name and address of a Florida financial institution with trust

powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Trustee, and shall be signed by the Trustee indicating willingness to serve in that capacity.

16.3.2. The recording of that Certificate of Termination automatically divests the Association of title to all Association property, and divests all unit owners in this Condominium of legal title to their respective Condominium parcels, and vests legal title in the Termination Trustee named in the Certificate of Termination, to all real and personal property which was formerly the Condominium property or Association property, without need for further conveyance. Beneficial title to the former Condominium and Association property shall be transferred to the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements, without further conveyance. Each lien encumbering a Condominium parcel shall be automatically transferred to the equitable interest in the former Condominium property and Association property attributable to the unit encumbered by the lien, with the same priority.

16.4. WIND-UP OF ASSOCIATION AFFAIRS — The termination of the Condominium does not, by itself, terminate the Association. The former unit owners and their successors and assigns shall continue to be members of the Association, and the members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and By-laws, to the extent necessary to, and for the sole purpose of, winding up the affairs of the Association in accordance with this Section.

16.5. TRUSTEE'S POWERS AND DUTIES — The Termination Trustee shall hold legal title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the

former unit owners approve a sale of the property as provided in this Section, the Termination Trustee shall have the power and authority to convey title to the purchaser, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Trustee may charge a reasonable fee for acting in such capacity, and such fee as well as all costs and expenses incurred by the Termination Trustee in the performance of its duties, shall be paid by the Association or taken from the proceeds of the sale of the former Condominium and Association property, and shall constitute a lien on the property superior to any other lien. The Trustee shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Trustee unless such liabilities are the result of gross negligence or malfeasance. The Termination Trustee may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions.

16.6. PARTITION; SALE — Following termination, the former Condominium property and Association property may be partitioned and sold upon the application of any former unit owner. If following a termination, at least seventy-five percent (75%) of the voting interests in the former Condominium agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Trustee, and the Trustee shall complete the transaction. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto. If the unit owners have not authorized a sale of the former Condominium and Association property within 1 year after the recording of the Certificate of Termination, the Trustee may proceed to sell the property without agreement by the Association or the former unit owners. The net proceeds of the sale of any of the

property or assets of the Association shall be distributed by the Termination Trustee to the beneficial owners thereof, as their interests shall appear.

16.7. NEW CONDOMINIUM — The termination of the Condominium does not bar creation of another Condominium including all or any portion of the property.

16.8. PROVISIONS SURVIVE TERMINATION — The provisions of this Section 16 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the By-laws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of the Trustee and of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Trustee, as well as post-termination costs of maintaining the former Condominium property, are common expenses, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

17. RIGHTS OF MORTGAGEES:

17.1. NO ASSOCIATION APPROVAL REQUIRED — An institutional first mortgagee who acquires title to a unit by purchase at a foreclosure sale, or by deed in lieu of foreclosure may own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association.

17.2. RIGHTS TO INFORMATION — Upon receipt by the Association from any institutional first mortgagee, Guarantor or Insurer of a copy of the mortgage held by such mortgagee, Guarantor or Insurer on a Unit, together with a written request from such mortgagee or

an Insurer or Guarantor of such mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such mortgagee, Insurer or Guarantor the following, and for which the Association may charge a reasonable fee:

17.2.1. FINANCIAL STATEMENTS — A copy of a financial statement of the Association for the immediately preceding fiscal year; and

17.2.2. INSURANCE CANCELLATION — Written notice of the cancellation or termination by the Association of any policies of insurance covering the Condominium or Association property or any improvements thereon, or any fidelity bonds of the Association except when the reason for the termination or cancellation of the insurance policy or bond is to change insurance companies or because the policy or bond is not needed or is not available; and

17.2.3. DAMAGE TO CONDOMINIUM — Written notice of any damage or destruction to the improvements located on the common elements or Association property which affects a material portion of the common elements or Association property or the unit securing its mortgage; and

17.2.4. EMINENT DOMAIN — Written notice of a condemnation or eminent domain proceeding affecting a material portion of the Condominium property or the unit securing its mortgage; and

17.2.5. DELINQUENT ASSESSMENTS — Written notice of failure by the Owner of a Unit encumbered by a first mortgage held by such institutional mortgagee, Guarantor or Insurer to pay any Assessments when such failure or delinquency has continued for a period of sixty (60) days or longer.

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17.2.6. FAILURE TO NOTIFY — The failure of the Association to send any such notice to any such mortgagee, Guarantor or Insurer shall have no effect on any meeting, action or thing which was to have been the subject of such notice nor affect the validity thereof and shall not be the basis for liability on the part of the Association.

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

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

19. ASSOCIATION AGREEMENTS — The Association is authorized to enter into agreements to acquire leaseholds, memberships, and other possessory or use interest in lands or

facilities such as country clubs, golf courses, marinas, and other facilities. Such interests need not be contiguous to the lands of the Condominium if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.

20. COMMON EXPENSES AND COMMON SURPLUS — Each unit's share shall be 1/96th part of the whole.

21. CONDEMNATION:

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

21.2. DETERMINATION WHETHER TO CONTINUE CONDOMINIUM — Whether the Condominium will be continued after condemnation will be determined in the manner provided in Section 11 above for determining whether damaged property will be reconstructed and repaired after a casualty.

21.3. DISBURSEMENT OF FUNDS — If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the owners of

condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

21.4. 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.

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

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

21.5.2. 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.

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

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21.6.1. PAYMENT OF AWARD — The fair market value of the unit immediately prior to the taking, as determined by agreement between the unit owner and the Association or by arbitration in accordance with Section 21.6.4. following, shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagee(s);

21.6.2. 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;

21.6.3. ADJUSTMENT OF SHARES IN COMMON ELEMENTS — The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as an equal fractional share for each remaining unit.

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

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

21.8. AMENDMENT OF DECLARATION — Changes in the 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 as ordered by a court or approved by a majority of unit owners (voting interests) of this Condominium, without the consent of any mortgagee being required for any such amendment.

22. VOTING — Each unit shall have one full indivisible vote in all matters.

23. RECREATION FACILITIES WITHIN THIS CONDOMINIUM — No recreational facilities are located in the Condominium, however, unit owners in the Condominium shall be members of the Bermuda Isles & Cays Swim & Racquet Club (“the Club”) pursuant to the provisions of the Bermuda Isles & Cays Swim & Racquet Club Membership Agreement, Articles of Incorporation and By-Laws of Bermuda Isles & Cays Swim & Racquet Club, Inc. which are incorporated herein by reference. Unit owners shall be obligated to pay assessments for the maintenance and operation of the Club.

24. PROPERTY HELD BY VANDERBILT COMMUNITY SERVICES ASSOCIATION, INC. — BERMUDA CAYS , A CONDOMINIUM, is located within a planned development known as Vanderbilt Lakes which contains multi-family developments, patio home

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developments, single family developments and single family lots. Certain preservation areas and open spaces including, but not limited to, roads, drainage areas, landscaping areas and entry ways are, pursuant to the Declaration of Covenants, Conditions and Restrictions of Vanderbilt Lakes, to be administered and maintained by Vanderbilt Community Services Association, Inc. Likewise, the wastewater management system located in Vanderbilt Lakes and which serves all residents in Vanderbilt Lakes is, pursuant to the Declaration of Covenants, Conditions and Restrictions of Vanderbilt Wastewater Treatment Area as amended, to be administered and maintained by Vanderbilt Community Services Association, Inc. All owners of BERMUDA CAYS, A CONDOMINIUM, are members of Vanderbilt Community Services Association, Inc. and have maintenance obligations to that Association as more fully provided in the above described Declarations.

25. SEVERABILITY AND NON-WAIVER — If any provision of this Declaration or its exhibits as now constituted or as later amended or any section, sentence, clause, phrase or word, or the application thereof in any circumstances is held invalid, the validity of the remainder and of the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby. The failure of the Association in any instance to enforce any covenant or provision of this Declaration or any of the Condominium documents shall not constitute a waiver of its right to do so thereafter in other instances.

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THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM and exhibits hereto made and entered into this 21st day of JANUARY, 1998.

WITNESSES:

(Sign) [Signature]
(Print) Herb Solomon
(Sign) [Signature]
(Print) Donald J. Couture

BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

BY [Signature]
(Print) PATRICIA J. MATRE
(Title) President
(Address) 3871 WINDWARD PASSAGE
BONITA SPRINGS FL 34134

STATE OF FLORIDA

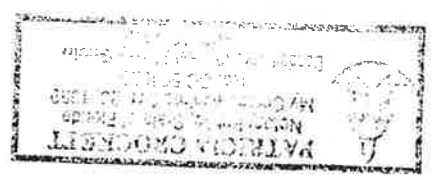
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 21st day of JANUARY, 1998, by [Signature], as President of **BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.**, on behalf of said partnership. He is personally known to me or has produced _____ as identification and did take an oath.

NOTARY PUBLIC:

(Sign) [Signature]
(Print) [Signature]

STATE OF FLORIDA AT LARGE (SEAL)
My Commission Expires:



State of Florida



Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on January 30, 1998, for BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., a Florida corporation, as shown by the records of this office.

The document number of this corporation is N30587.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Fourth day of February, 1998



CR2EO22 (2-95)

Sandra B. Northam

Sandra B. Northam
Secretary of State

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

FILED
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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

These are the Amended and Restated Articles of Incorporation of **Bermuda Cays Condominium Association, Inc.** originally filed with the Florida Department of State on February 9, 1989, under Document #N30587. Amendments included have been adopted pursuant to F.S. 617.1007. There is no discrepancy between the Articles of Incorporation as heretofore amended and these Restated Articles other than the inclusion of these amendments and the omission of matters of historical interest.

ARTICLE I

The name of this corporation is

BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

ARTICLE II

PURPOSES AND POWERS:

The purpose for which this corporation is organized is to act as the governing association of Bermuda Cays, A Condominium, located in Bonita Springs, Lee County, Florida. It shall have all of the powers permitted to a not-for-profit Florida Corporation together with those set forth in the Condominium Act and the Declaration of Condominium and the Bylaws. The Association's principal address is in care of R&P Property Management, 265 Airport Road S, Naples, Florida 34104.

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ARTICLE III

QUALIFICATION OF MEMBERS AND MANNER OF ADMISSION:

The qualification of members and the manner of their admission shall be as follows: Any approved person or persons who hold title in fee simple to a Condominium unit in the Condominium shall by virtue of such ownership be a member of this corporation. Provided however, that transfer of membership shall be made only as a part of and incident to the transfer of ownership of a condominium unit with such transfers being subject to and controlled by the transfer procedures set forth in the Declaration of Condominium. After receiving approval of the Association required by the Declaration of Condominium, change of membership in the Association shall be established by recording in the Public Records of Lee County, Florida, a deed or other instrument establishing record title to a unit in the condominium and the delivery of a certified copy of the recorded instrument to the Association at the time of taking occupancy. The owner designated by such instrument thereby becomes a member of the Association.

ARTICLE IV

TERMS OF EXISTENCE:

The term for which this Corporation is to exist shall be perpetual, unless sooner dissolved pursuant to provisions of Florida Statutes Chapter 617, as amended.

ARTICLE V

DIRECTORS AND OFFICERS:

The affairs of this Corporation shall be managed by a governing Board of five Directors who shall be members of the Association or the spouses of members and who shall be elected at the time and place the Annual Meeting of the Corporation is scheduled to occur, regardless of whether a quorum is present, as provided for in the Bylaws. The officers shall be: a President,

one or more Vice Presidents, a Secretary, and a Treasurer, and such other assistant officers as the Directors shall decide. They shall be elected by and from the Board of Directors. The officers and members of the Board shall perform such duties, hold office for such terms, and take office at such times as are provided by the Bylaws of the Corporation.

ARTICLE VI

BYLAWS:

The Bylaws of this Corporation may be made, altered, amended or repealed by a majority of the members' voting interests as provided for in the Bylaws.

ARTICLE VII

AMENDMENT OF ARTICLES OF INCORPORATION:

Amendments to these Articles of Incorporation may be proposed and adopted as follows:

An Amendment may be proposed by either the Board of Directors or by twenty-five percent of the voting interests and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the Bylaws, which includes a notice of the substance of the proposed Amendment, or by written agreement as provided for in the Declaration.

The Amendment must be approved by a majority of the members' voting interests.

These Amended and Restated Articles of Incorporation were duly adopted by the required percentage of the membership, which was a sufficient number for approval, on January 20 1998.

Signed this 21st day of January, A.D. 1998.

**BERMUDA CAYS CONDOMINIUM
ASSOCIATION, INC.**

By: Patricia J. Matre
President Patricia J. Matre

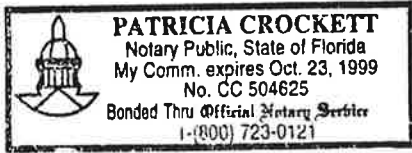
By: [Signature]
Secretary

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STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 2nd day of January 1997, by Patricia Waters, President of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced [Signature] as identification.



NOTARY PUBLIC:

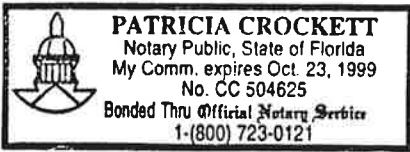
(Sign) Patricia Crockett

(Print) Patricia Crockett
State of Florida at Large (Seal)
My Commission Expires 10-23-99

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this 2nd day of January 1997, by [Signature], Secretary of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced [Signature] as identification.



NOTARY PUBLIC:

(Sign) Patricia Crockett

(Print) Patricia Crockett
State of Florida at Large (Seal)
My Commission Expires 10-23-99

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Note: SUBSTANTIAL REWORDING OF BYLAWS — SEE ORIGINAL BYLAWS FOR ORIGINAL TEXT.

EXHIBIT "C" TO DECLARATION
AMENDED AND RESTATED BY-LAWS
OF
BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

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1. **IDENTITY** — These are the Amended and Restated Bylaws of **Bermuda Cays Condominium Association, Inc.**, a nonprofit Florida Corporation formed for the purpose of administering Bermuda Cays, a Condominium which is located at Bonita Springs, Lee County, Florida, upon the land described in the Declaration of Condominium. (The corporation shall hereafter be referred to as the "Association".)

1.1. **OFFICE** — The office of the Association shall be at the Condominium or such other location within the Lee or Collier Counties as may from time to time be determined by the Board of Directors.

1.2. **FISCAL YEAR** — The fiscal year of the Association shall be the calendar year, or as otherwise determined from time to time by the Board of Directors.

1.3. **SEAL** — The seal of the Association shall be circular in shape, bear the abbreviated name of the Association, the word "Florida," and the year of establishment, 1989.

2. **MEMBERS' MEETINGS**

2.1. **ANNUAL MEETINGS** — Annual members' meetings shall be held at such location and time, and on such date as may be determined by the Board of Directors each year,

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in conjunction with the election of Directors and for transacting any business authorized to be transacted by the members.

2.2. SPECIAL MEETINGS — Special member's meetings shall be held whenever called by the President, Vice President or by a majority of the Board of Directors and when requested by written petition signed and dated from at least 25% of the total voting interests. Such petition shall state the purpose(s) of the meeting. The business at a special meeting requested by petition shall be limited to the items specified in the petition, and contained in the notice of the meeting. In the event that the Board of Directors adopts a budget requiring assessments exceeding 115% of the assessments for the preceding year, the Board upon written application of 10% of the voting interests shall call a special meeting of the unit owners to consider and enact an alternate budget. The determination as to whether the assessments exceed 115% shall be made in accordance with F.S. 718.112 (2)(e). Members meetings to recall a member or members of the Board of Directors may be called by 10% of the Association voting interests.

2.3. NOTICE OF MEMBERS' MEETINGS — Notice of members meetings including a recall meeting and the annual meeting, which must include an identification of agenda items, shall be delivered or mailed to each unit owner by United States mail, unless waived in writing, at least 14 days prior to the meeting, provided however, that any election at which one or more Directors are to be elected must be noticed as provided for in Section 2.4. next following. An officer of the Association shall execute an affidavit of mailing or delivery per F. S. 718.112(2)(d)(2) or provide a United States Postal Certificate of Mailing which shall be retained in the official records of the Association as proof of such mailing or delivery. Written notice of the meeting shall

also be posted in a conspicuous place on the Condominium property at least 14 continuous days prior to the annual meeting. The Board, upon notice to unit owners shall by duly adopted rule designate a specific location on the Condominium property upon which all notices of unit owner meetings shall be posted.

2.4. BOARD ELECTION MEETINGS — NOTICE AND PROCEDURE

— The regular or general election shall occur at the time and place at which the annual meeting is scheduled to occur, regardless of whether a quorum is present.

2.4.1. Not less than 60 days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each unit owner entitled to vote, the first notice of the date of the election. It must contain the name and correct mailing address of the Association. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the Association not less than 40 days before a scheduled election. The Association shall then mail or deliver a second notice of the election to all unit owners entitled to vote therein not less than 14 days before the scheduled election, together with a written ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet which must be furnished by the candidate not less than 35 days before the election, on one side of a sheet, no larger than 8 1/2 inches by 11 inches, with the costs of copying and mailing to be borne by the Association. The Association shall not edit, alter, or otherwise modify the content of the information sheet and shall have no liability for its contents.

2.4.2. A voting machine may also be used by those attending the meeting in person, and a unit owner who needs assistance in voting due to blindness, disability or inability to read or write may obtain assistance from a member of the Board of Administration or other unit owner but no unit owner shall permit another person to cast his ballot and any such ballots improperly cast shall be deemed invalid.

2.4.3. There is no quorum requirement; however at least 20 percent of the eligible voters must cast a valid ballot to have a valid election and elections shall be decided by a plurality of those votes cast.

2.4.4. An election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.

2.4.5. Notwithstanding anything in this paragraph 2., the Association may, by the affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in these Bylaws which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

2.5. **NOTICE — OWNERS BUDGET MEETING** — Notice of a special meeting called by the Board at the written request of 10% of the owners because of a budget exceeding 115% of that of the preceding year requires not less than 10 days' written notice to each unit owner.

2.6. **NOTICES SPECIFIC** — All notices of meetings shall state clearly and particularly the time, place, and purpose or purposes of the meeting and shall incorporate an

identification of agenda items.

2.7. QUORUM — A quorum at members' meetings shall consist of persons entitled to cast a majority of the voting interests of the entire membership. Decisions made by a majority of the voting interests represented at a meeting at which a quorum is present in person or by proxy shall be binding and sufficient for all purposes except such decisions as may by F.S. 718 or the documents require a larger percentage in which case the percentage required in F.S. 718 or the Documents shall govern.

2.8. OWNER PARTICIPATION — Unit owners shall have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the Association may adopt reasonable rules governing the frequency, duration and manner of unit owner participation. Such rules must be adopted in advance and in written form. Any unit owner may tape record or videotape a meeting of the unit owners subject and pursuant to Rules adopted from time to time by the Division of Florida Land Sales, Condominiums and Mobile Homes.

2.9. INDIVISIBLE VOTE — Each unit shall have one indivisible vote. If multiple owners of a unit cannot agree on a vote, the vote shall not be counted. Voting certificates are not authorized.

2.10. PROXIES — Votes may be cast in person or by proxy. Proxies shall be in writing, signed and dated and shall be valid only for the particular meeting designated therein or an adjournment thereof, but in no event for more than 90 days, and must be filed with the Secretary before or at the voter registration immediately preceding the meeting. A photographic, photostatic or equivalent reproduction of a proxy is a sufficient proxy pursuant to F.S. 607.0722(2). Except as

specifically otherwise provided in this paragraph, or by the Condominium Act from time to time, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form adopted by the Division of Florida Land Sales, Condominiums and Mobile Homes. Both limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves; for votes taken to waive financial statement requirements; for votes taken to amend the Declaration; for votes taken to amend the Articles of Incorporation or Bylaws; and for any other matter which F.S. 718 requires or permits a vote of the unit owners. No proxy, limited or general, shall be used in the election of Board members unless an alternate election procedure is adapted pursuant to Section 2.4.5. above. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given.

2.11. NO QUORUM — If any meeting of members cannot be organized because a quorum is not present, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

2.12. ORDER OF BUSINESS — The order of business at annual members' meetings and, as far as applicable at all other members' meetings, may be:

- (a) Election of a Chairman of the meeting, unless the President or Vice President of the Association is present then he (or she) shall preside.
- (b) Collection of ballots.
- (c) Checking of signatures and unit identifications on ballot outer envelopes against the eligible voter lists.

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- (d) Registering proxies and counting votes.
- (e) Proof of Notice of meeting or waiver of notice.
- (f) Calling of the roll.
- (g) Reading and disposal of any unapproved minutes.
- (h) Reports of Directors.
- (i) Reports of Committees.
- (j) Announcement of the results of the election of Directors.
- (k) Unfinished business.
- (l) New business.
- (m) Adjournment.

3. BOARD OF DIRECTORS

3.1. NUMBER, TERM, AND QUALIFICATIONS. The affairs of the Corporation shall be governed by a Board of Directors. The Board shall consist of five. All Directors shall be members or spouses of members. All officers of a corporation, trust, partnership or other such owner shall be deemed to be members so as to be eligible for Board membership. Directors shall be elected by the Voting Interests as to regular or general elections at the time and place at which the annual meeting is scheduled to occur regardless of whether a quorum is present. Members of the Board shall be elected for terms of two years. To provide continuity, the Directors' terms shall be staggered. At the Annual Meeting in 1998, three Directors shall be elected for two year terms and two Directors for one year terms. Thereafter, in odd numbered years two Directors shall be elected for two year terms and in even numbered years three Directors shall be elected for

two year terms. In the event of a tie, for a designated position on the Board the tie shall be resolved by agreement of the candidates, if possible; otherwise the winning Director shall be chosen in a blind drawing.

3.2. TERM OF SERVICE — The term of each Director's service, except in the case of a vacancy caused by recall, shall extend until their elected term is completed and thereafter until their successor is duly elected and qualified or until the Director is recalled in the manner provided in the Condominium Act by a majority of the voting interests. A Board member appointed by the Board to replace a recalled Board member shall fill the vacancy until the next regularly scheduled election for any position. Provided that a seat held by a Director who ceases to be an owner shall thereby automatically become vacant.

3.3. BOARD VACANCIES — Vacancies in the Board of Directors occurring between annual meetings of members shall be filled by appointment by a majority vote of the remaining Directors; provided, however, that if a majority or more of the Board members are removed by recall the vacancies shall be filled in accordance with Rule 61B-23.0027 (if at a meeting) or with Rule 61B-23.0028 (if by written agreement), Florida Administrative Code; provided further that a Director who has been recalled by the membership may not be appointed to fill the vacancy created by his removal. A Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

3.4. ORGANIZATIONAL MEETING — The organizational meeting of each newly elected Board of Directors to elect officers shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present. Unless otherwise noticed, it shall be

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held immediately following the annual meeting. Election of officers may be by secret ballot.

3.5. REGULAR MEETINGS — Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of regular meetings, unless noticed previously, shall be given to each Director personally or by mail, telephone or telecopier at least three days prior to the day named for such meeting.

3.6. SPECIAL MEETINGS — Special meetings of the Directors may be called by the President or Vice-President and must be called by the Secretary at the written request of any two (2) Directors. Not less than three day's notice of the meeting (except in an emergency) shall be given personally or by mail, telephone or telecopier, which notice shall state the time, place and purpose of the meeting.

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

3.8. NOTICE TO OWNERS — Notices of Directors meetings, and meetings of committees to make recommendations regarding the Association budget or which have the authority to take final action on behalf of the Board shall be posted conspicuously on the Condominium property at least 48 continuous hours in advance, except in an emergency; all other committee meetings are exempt. Notices shall specifically incorporate an identification of agenda items. Meetings at which a regular assessment is to be considered shall contain a statement that assessments will be considered and the nature of such assessments. However, written notice of any

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Directors present at a meeting at which a quorum is present shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings, except as may be provided by the Condominium Act from time to time, and a vote or abstention for each member present shall be recorded in the minutes. If at any meeting of the Board there be less than a quorum present, the Director(s) present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, which must be properly noticed, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

3.11. PRESIDING OFFICER — The presiding officer at Directors' meetings shall be the President if such an officer has been elected; and if none, then the Vice President shall preside. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

3.12. DIRECTOR COMPENSATION — Directors shall serve without pay unless the voting interests annually authorize Director's fees, but shall be entitled to reimbursement for expenses reasonably incurred.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS — All of the powers and duties of the Association existing under the Florida Not-For-Profit Corporation Statute, the Condominium Act, the Declaration of Condominium, the Corporate Charter and these Bylaws shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. Such

meeting at which non-emergency special assessments, or at which amendment to rules regarding unit use will be proposed, discussed, or approved, shall be mailed or delivered to the unit owners and posted conspicuously on the Condominium property not less than 14 continuous days prior to the meeting. Evidence of compliance with this 14-day notice shall be by an affidavit executed by the Secretary and filing among the official records of the Association. Upon prior notice to the unit owners, the Board shall by duly adopted rule designate a specific location on the Condominium property upon which all notices of Board meetings shall be posted.

3.9. OWNER PARTICIPATION — Meetings of the Board of Directors and any committee thereof required to give notice pursuant to 3.8 above, at which a quorum of the members of that committee are present shall be open to all unit owners except that unit owners shall not be privileged to attend meetings of the Board or a committee with the Association's attorney with respect to proposed or pending litigation when the meeting is held for the purpose of seeking or rendering legal advice. The right to attend meetings includes the right to speak with reference to all identified agenda items provided however, the Association may adopt reasonable rules governing the frequency, duration and manner of unit owner participation. Such rules must be adopted in advance and in written form. Unit owners shall have the right to tape record or videotape the meetings of the Board of Administration or Committee subject and pursuant to Rules adopted from time to time by the Division of Florida Land Sales, Condominiums and Mobile Homes.

3.10. BOARD MEETINGS, QUORUM AND VOTING — A quorum at Directors' Meetings shall consist of a majority of the Directors. The acts approved by a majority of

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Directors present at a meeting at which a quorum is present shall constitute the acts of the Board. Directors may not vote by proxy or by secret ballot at Board meetings, except as may be provided by the Condominium Act from time to time, and a vote or abstention for each member present shall be recorded in the minutes. If at any meeting of the Board there be less than a quorum present, the Director(s) present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting, which must be properly noticed, any business which might have been transacted at the meeting as originally called may be transacted. Absent Directors may later sign written joinders in Board actions, but such joinders may not be used for purposes of creating a quorum.

3.11. PRESIDING OFFICER — The presiding officer at Directors' meetings shall be the President if such an officer has been elected; and if none, then the Vice President shall preside. In the absence of the presiding officer, the Directors present shall designate one of their number to preside.

3.12. DIRECTOR COMPENSATION — Directors shall serve without pay unless the voting interests annually authorize Director's fees, but shall be entitled to reimbursement for expenses reasonably incurred.

4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS — All of the powers and duties of the Association existing under the Florida Not-For-Profit Corporation Statute, the Condominium Act, the Declaration of Condominium, the Corporate Charter and these Bylaws shall be exercised exclusively by the Board of Directors, or its duly authorized agents, contractors, or employees subject only to the approval by unit owners when such is specifically required. Such

powers and duties of the Directors shall include, but shall not be limited to, the following:

4.1. TO ADOPT BUDGETS, BORROW MONEY AND MAKE AND COLLECT ASSESSMENTS AND FEES from and against owners and users to defray the expenses of the Association.

4.2. TO USE THE PROCEEDS OF ASSESSMENTS in the exercise of its powers and duties.

4.3. THE MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION of the Condominium property.

4.4. TO ENACT RULES AND REGULATIONS concerning the use of the common elements and the units subject to any limitations contained in the Condominium Act and the Declaration of Condominium.

4.5. TO RECONSTRUCT COMMON ELEMENT IMPROVEMENTS AFTER CASUALTY and the further improvement of the properties.

4.6. TO APPROVE OR DISAPPROVE PROPOSED ACTIONS in the manner provided by the Condominium Declaration.

4.7. TO ENFORCE by legal means the provisions of applicable laws and the Condominium documents.

4.8. TO CONTRACT FOR MANAGEMENT of the Condominium.

4.9. TO CARRY INSURANCE for the protection of the unit owners, users and the Association.

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4.10. TO PAY THE COST OF ALL UTILITY SERVICES rendered to the Condominium and not billed to owners of individual units or users.

4.11. TO EMPLOY PERSONNEL and designate other officers for reasonable compensation and grant them such duties as seem appropriate for proper administration of the purposes of the Association.

4.12. TO BRING AND DEFEND SUITS, MAKE AND EXECUTE CONTRACTS, DEEDS, MORTGAGES, LEASES, LICENSES and other instruments by its officers and to purchase, own, lease, convey and encumber real and personal property. To grant easements and licenses over the Condominium property necessary or desirable for proper operation of the Condominium.

4.13. TO COMPLY WITH REQUIREMENTS FOR ENTERING CONTRACTS FOR PRODUCTS AND SERVICES — All contracts for the purchase, lease or renting of materials or equipment or for services, or which are not to be fully performed within one year, shall be in writing. As to any such contract which requires payment exceeding 5 percent of the total annual budget of the Association including reserves except for contracts with employees of the Association, and for attorneys, accountants, community association managers, architects, engineering and landscape architects, the Association shall obtain competitive bids unless the products and services are needed as the result of an emergency or unless the desired supplier is the only source of supply within Lee County. The Association need not accept the lowest bid. This Paragraph shall be deemed to incorporate the provisions of the Condominium Act as it exists from time to time.

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4.14. TO LEVY FINES — The Directors may, pursuant to F.S. 718.303, impose fines not to exceed \$100.00 per violation, for failure to comply with the provisions of the Condominium documents, including the rules and regulations, by owners, occupants, licensees, tenants and invitees. A fine may be imposed for each day of continuing violation with a single notice and opportunity for hearing, provided that no fine shall in the aggregate exceed \$1,000.00.

4.14.1. HEARING NOTICE — The party against whom the fine is sought to be levied shall be afforded an opportunity for hearing after reasonable notice of not less than fourteen (14) days and said notice shall include:

1. A statement of the date, time and place of the hearing;
2. A statement of the provisions of the declaration, association charter, bylaws, or rules and regulations which have allegedly been violated; and
3. A short and plain statement of the matters asserted by the association.

4.14.2. RESPONDENT'S RIGHTS — The party against whom the fine or sanction may be levied shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the association.

4.14.3. HEARING COMMITTEE — The hearing must be held before a committee of other unit owners, none of whom are members or spouses of the Board of Directors. If the committee does not agree with the fine, the fine may not be levied.

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4.15. TO APPOINT COMMITTEES — The Directors may appoint committees except that committees for the purpose of nominating candidates for election to the Board of Directors are prohibited. The Board may, however, appoint a search committee to encourage qualified persons to become candidates for the Board. All committees and committee members shall serve at the pleasure of the Board.

4.16. TO MAINTAIN FIRE SAFETY COMPLIANCE — The Directors may accept a Certificate of Compliance from a licensed electrical contractor or electrician as evidence of compliance of the Condominium units with the applicable Fire and Life Safety Code.

4.17. TO ADOPT SPECIFICATIONS FOR HURRICANE SHUTTERS — The Board of Directors shall adopt hurricane shutter specifications for the buildings which shall include color, style, and other factors deemed relevant by the Board. All specifications adopted by the Board shall comply with the applicable building code. The Board shall not refuse to approve the installation or replacement of hurricane shutters conforming to the specifications adopted by the Board. Laminated glass or window film architecturally designed to function as hurricane protection which complies with the applicable building code is acceptable in lieu of hurricane shutters.

4.18. TO HAVE THE FOLLOWING EMERGENCY POWERS — The following shall apply to the extent not viewed to be in conflict with the Condominium Act:

4.18.1. In anticipation of or during any emergency defined in Section 4.18.5. below, the Board of Directors of the Association may:

(a) Name as assistant officers persons who are not Board members, which assistant officers shall have the same authority as the executive officers to whom

they are assistant, during the period of the emergency, to accommodate the incapacity of any officer of the Association; and

(b) Relocate the principal office or designate alternative principal offices or authorize the officers to do so.

4.18.2. During any emergency defined in Section 4.18.5. below:

(a) Notice of a meeting of the Board of Directors need be given only to those Directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio;

(b) The Director or Directors in attendance at a meeting shall constitute a quorum.

4.18.3. Corporate action taken in good faith during an emergency under this Section to further the legitimate affairs of the Association:

(a) Binds the Association; and

(b) Shall have the presumption of being reasonable and necessary.

4.18.4. An officer, director, or employee of the Association acting in accordance with any emergency Bylaws is only liable for willful misconduct.

4.18.5. The provisions of these emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws for the period of emergency.

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

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4.19. TO CONVEY TO CONDEMNING AUTHORITIES — To convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right of way expansion, or other public purposes, whether negotiated or as the result of eminent domain proceedings.

5. OFFICERS

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

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

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

5.4. SECRETARY — POWERS AND DUTIES — The Secretary shall keep the minutes of all proceedings of the Directors and the members; shall attend to the giving and serving of all notices to the members and Directors and other notices required by law; shall have

custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed; shall keep and have custody of the records of the Association, except those of the Treasurer; and shall perform all other duties incident to the office of Secretary of the Association and as may be required by the Directors or the President.

5.5. TREASURER — POWERS AND DUTIES — The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness; shall keep the assessment rolls and accounts of the members; shall keep the books of the Association in accordance with good accounting practices; and shall perform all other duties incident to the office of the Treasurer of a corporation.

5.6. EMPLOYEE COMPENSATION — The compensation of all employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association.

5.7. INDEMNIFICATION — Every Director and every officer and committee member of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees through all trial and appellate levels, reasonably incurred by or imposed in connection with any proceeding, arbitration, or settlement to which such person may be a party, or in which they may become involved, by reason of being or having been a Director, officer, or committee member of the Association. Notwithstanding the foregoing, in the event of a voluntary settlement, the indemnification provisions herein shall not be automatic and shall apply only when the Board approves such settlement. Notwithstanding anything contained herein to the contrary, in instances where the Director, officer, or committee member admits or is adjudged

guilty of willful malfeasance, misfeasance or nonfeasance in the performance of their duties, the indemnification provisions contained herein shall not apply. Otherwise, the foregoing right of indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which such Director, officer or committee member may be entitled by common law or statute.

5.8. DELEGATION — To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

6. MINUTES AND INSPECTION OF RECORDS — Minutes of all meetings of unit owners and of the Board of Directors shall be kept in a businesslike manner and shall be reduced to written form within thirty (30) days and these, plus records of all receipts and expenditures and all other official records, as defined in F.S. 718.111, except those which may be exempted by the Condominium Act and/or the Rules of the Division of Florida Land Sales, Condominiums and Mobile Homes from time to time, shall be available for inspection by unit owners and Board members within 5 working days after receipt of a written request by the Board or its designee. This provision shall be deemed to have been complied with by having a copy of the official records available for inspection or copying at the Condominium. Provided, however, that the Directors may adopt, in advance and in written form, reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying.

7. FISCAL MANAGEMENT — Shall be in accordance with the following provisions:

7.1. BUDGET — A proposed annual budget of common expenses shall be prepared by the Board of Directors which shall include all anticipated expenses for operation,

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maintenance and administration of the Condominium including insurance and management fees, if any, and for all of the unpaid operating expenses previously incurred. It shall accrue reserves per F.S. 718.112(2)(F)(2) which may later be waived or reduced by a majority vote at a duly called meeting of the Association. Reserve funds and any accrued interest on the funds shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interests voting in person or by proxy at a duly called meeting of the Association. It will contain a reasonable allowance for contingencies and provide funds for all unpaid operating expenses previously incurred. If at any time a budget shall prove insufficient, it may be amended by the Board of Directors for the remaining portion of the fiscal year.

7.2. MAILING — A copy of the proposed annual budget shall be mailed or delivered to the unit owners not less than 14 days prior to the meeting of the directors at which the budget will be adopted together with a notice of the meeting.

7.3. ASSESSMENTS — The shares of the unit owners of the common expenses shall be payable in quarterly installments in advance, and shall become due on the first day of each quarter and which shall become delinquent ³⁰~~10~~ days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of common expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed in the Public Records of Lee County, Florida and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

7.4. SPECIAL ASSESSMENTS AND CHARGES — Assessments and charges for expenses which are not provided for and funded in the Budget shall be made by the Board of Directors, and the time of payment shall likewise be determined by them.

7.5. ASSESSMENT ROLL — The assessments for common expenses and charges shall be set forth upon a roll of the units which shall be available for inspection at all reasonable times by unit owners. Such roll shall indicate for each unit the name and address of the owner, and the assessments and charges paid and unpaid. A certificate made by a duly authorized representative of or by the Board of Directors as to the status of a unit's account may be relied upon for all purposes by any person for whom made.

7.6. LIABILITY FOR ASSESSMENTS AND CHARGES — A unit owner regardless of how his title has been acquired including by purchase at a foreclosure sale or by deed in lieu of foreclosure shall be liable for all assessments and charges coming due while the owner of a unit. Additionally a unit owner shall be jointly and severally liable with the previous owner for all unpaid assessments and charges due and payable up to the time of transfer of title. Liability may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the unit for which the assessments are made. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the lesser of:

- (1) The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 6 months immediately preceding the acquisition of title and for which payment in full has not been received by the Association; or
- (2) One percent of the original mortgage debt.

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This partial excusal shall not apply unless the first mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to, or reasonably discoverable by the mortgagee. The person acquiring title shall pay the amount owed to the Association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments. This paragraph shall be deemed amended so as to incorporate the provisions of F.S. 718.116 as amended from time to time.

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

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

7.9. COLLECTION — INTEREST; ADMINISTRATIVE LATE FEE; APPLICATION OF PAYMENTS — Assessments paid on or before ten days after the date due shall not bear interest, but all sums not paid on or before ten days shall bear interest at the highest lawful rate from time to time (now 18% per annum) from the date due until paid. In addition to

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such interest the Association may charge an administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment for which payment is late. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's fees and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

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

7.11. ACCOUNTS — All sums collected from assessments or charges shall be credited to accounts from which shall be paid the expenses for which the respective assessments or charges are made.

7.12. ASSOCIATION DEPOSITORY — The depository of the Association shall be a bank or banks or state or federal savings and loan associations or a member firm of the New York Stock Exchange with offices in Florida and as shall be designated from time to time by

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the Directors and in which the monies for the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

7.13. COMMINGLING OF FUNDS PROHIBITED — All funds shall be maintained separately in the Association's name. Reserve and operating funds may not be commingled. No manager or business entity required to be licensed or registered under F.S. 468.432, and no agent, employee, officer, or Director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association or community association as defined in F.S. 468.431.

7.14. ANNUAL FINANCIAL STATEMENTS — Financial statements meeting the requirements of Rule 61B-22.006 Florida Administration Code shall be made annually. A copy of the financial statements shall be furnished to each member within 90 days following the end of the fiscal year or at the annual meeting.

7.15. FIDELITY BONDING — The Association shall obtain and maintain blanket fidelity bonding for each person who is authorized to sign checks and the President, Secretary and Treasurer of the Association in an amount not less than \$10,000.00 for each person, but in no event less than the minimum required by the Condominium Act from time to time based upon the total of the Association annual budget, including reserves. The Association shall bear the cost of bonding.

8. PARLIAMENTARY RULES — A parliamentary procedure such as Robert's Rules of Order uniformly applied shall govern the conduct of corporate proceedings when not in

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conflict with the Declaration, the Articles of Incorporation or Bylaws of the Association or with the laws of the State of Florida.

9. BY- LAW AMENDMENTS — After turnover, amendments to the Bylaws shall be adopted in the following manner:

9.1. NOTICE of the subject matter of a proposed amendment shall be included in the notice of any meeting or the text of any written agreement at which or by which a proposed amendment is considered.

9.2. PROPOSAL OF AMENDMENTS — An amendment may be proposed by either a majority of the Directors or by Twenty-five Percent (25%) of the voting interests of the Association.

9.3. ADOPTION OF AMENDMENTS — A resolution or written agreement adopting a proposed amendment must receive approval of a majority of the voting interests of the Association.

9.4. EFFECTIVE DATE — An amendment when adopted shall become effective only after being recorded in the Public Records of Lee County, Florida.

9.5. AUTOMATIC AMENDMENT — These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium, the Association Articles of Incorporation, or the Condominium Act as amended from time to time.

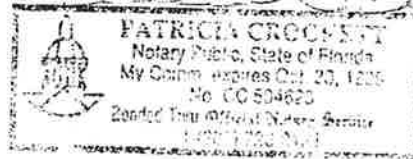
9.6. PROPOSED AMENDMENT FORMAT — Proposals to amend existing Bylaws shall contain the full text of the Bylaws to be amended. New words shall be underlined and

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 BY-LAW. SEE BY-LAW NUMBER _____ FOR PRESENT TEXT."

10. MANDATORY ARBITRATION AND MEDIATION OF DISPUTES — If unresolved, disputes between the Board and unit owners as defined in F.S. 718.1255(1) must be arbitrated or mediated in mandatory non-binding arbitration or mediation proceedings as provided in the Condominium Act prior to commencing litigation.

The foregoing were adopted as the Amended and Restated Bylaws of **BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.** on this 21st day of January, 1998.

Patricia J. Matre
PRESIDENT



BERMUDA CAYS, A CONDOMINIUM

EXHIBIT "D"

RULES AND REGULATIONS

A. GENERAL RULES

1. Passenger automobiles, sport/utility vehicles, and vans (used for personal transportation and not commercially) that do not exceed the size of one parking space may be parked in the parking spaces provided for that purpose. Each unit shall have one space. Parking spaces are assigned and are limited common elements. Commercial vehicles, trucks, mini-trucks, motorcycles, mopeds, campers, motor homes, trailers, boats and boat trailers are prohibited. Bicycles shall be parked only as may be designated by the Directors. Vehicle maintenance, except car washing in a designated area, if any, is not permitted on the Condominium property. All vehicles must be currently licensed and no inoperable or unsightly vehicles may be kept on condominium property. Commercial vehicles used by vendors of the owners or the Association while engaged in work at the Condominium are permitted. Loading and unloading of motor homes and RV's is permitted provided that the maximum time that they may remain is 24 hours (including overnight) and they must not interfere with other vehicles comings or goings, or block other's parking spaces.

2. No exterior radio, television or data antenna or any exterior wiring for any purpose may be installed without the written consent of the Directors.

3. To maintain harmony of exterior appearance no one shall make any changes to, place anything upon, affix anything to or exhibit anything from any part of the Condominium or Association property visible from the exterior of the buildings or from common elements without the prior written consent of the Directors. "Open house" and "For Sale" signs are permitted to be placed only at the entrance to Bermuda Cays and in front of the unit(s) which is for sale or holding the open house. These signs may be and remain posted only between the hours or 9 AM to 5 PM and must be removed daily. All curtains, shades, drapes and blinds shall be white or a neutral

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nearly white color or lined with material of these colors. Balcony and lanai tile and floor covering material and colors must be approved by the Board.

4. All common elements inside and outside the buildings will be used for their designated purposes only, and nothing belonging to owners, their family, tenants or guests shall be kept therein or thereon without the approval of the Directors, and such areas shall at all times be kept free of obstruction. Owners are financially responsible to the Association for damage to the common elements caused by themselves, their tenants, guests and family members.

5. Two dogs (not taller than 15 inches at the shoulder at maturity) or two cats (or one dog and one cat) and no more than 2 birds, tropical fish and other customary non-exotic (snakes are prohibited) quiet and inoffensive household pets not being kept or raised for commercial purposes shall be permitted upon the following conditions:

- a. No pets shall be permitted in the pool area, leashed or unleashed.
- b. Elsewhere on the common elements pets shall be under hand-held leash or carried at all times.
- c. Messes made by pets must be removed by owners or handlers immediately.
- d. Pets that are vicious, noisy or otherwise unpleasant will not be permitted in the Condominium. In the event that a pet has become a nuisance or unreasonably disturbing in the opinion of the Board of Directors, written notice shall be given to the owner or other person responsible for the pet and the pet must be removed from the condominium property within three (3) days.
- e. Guests and tenants are not permitted to have pets.
- f. The Board of Directors has the authority and discretion to make exceptions to the limitations in this regulation in individual cases and to impose conditions concerning the exceptions.

6. Disposition of garbage and trash shall be only by use of receptacles approved by the Association or by use of garbage disposal units. Paper or cardboard boxes and plastic containers such as milk and soft drink bottles must be flattened prior to disposal and general trash must be securely bagged. Food and vegetable scraps are to be disposed of in the individual residence garbage disposals. Bulky items must be carried to the trash dumpster.

7. All persons occupying residences other than the owners shall be registered with the Manager or other designate of the Association at or before the time of their occupancy of the residence. This includes renters and house guests.

Residences may not be rented for periods of less than 60 days and no more than three times per calendar year. A copy of these Rules and Regulations must be given to the tenants and guests by the owner, or the owner's agent. No residence may be permanently occupied by more than 5 persons in 2 bedroom units and 6 persons in 3 bedroom units, nor may more than seven persons, including guests, occupy a residence overnight.

8. The Association shall retain a pass key to the residences, and the owners shall provide the Association with a new or extra key whenever locks are changed or added for the use of the Association pursuant to its statutory right of access to the residences.

9. Children shall be under the direct control of a responsible adult. Children under the age of 12 may not use the pool unaccompanied by an adult nor shall they be permitted to run, play tag or act boisterously on the condominium property. Skateboarding, "Big Wheels", or loud or obnoxious toys are prohibited. Children may be removed from the common areas for misbehavior by or on the instructions of the Directors.

10. Loud and disturbing noises are prohibited. All radios, televisions, tape machines, compact disc players, stereos, singing and playing of musical instruments, etc. shall be regulated to

sound levels that will not disturb others and if used at or in the vicinity of the pool shall be used only with earphones. No vocal or instrumental practice is permitted after 10:00 p.m. or before 9:00 a.m.

11. Use of barbecue grills shall only be allowed in areas designated as safe and appropriate by the Directors. Electric grills are permitted, but gas or charcoal Grills shall not be used on balconies or lanais.

12. Illegal and immoral practices are prohibited.

13. Lawns, shrubbery or other exterior plantings shall not be altered, moved or added to without permission of the Association.

14. No glass of any kind shall be permitted in the pool area. Any liquid refreshments consumed near the pool area shall be in paper or plastic containers.

15. Laundry and bathing apparel, shall not be maintained outside of the residences or limited common elements (balconies and lanais), and such apparel and accessories shall not be exposed to view.

16. No nuisance of any type or kind shall be maintained upon the Condominium property.

17. Nothing shall be done or kept in any residence or in the common elements which will increase the rate of insurance on the building or contents thereof, without the prior written consent of the Directors. No owner shall permit anything to be done or kept in his residence or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law or building code.

18. All moving must be Mondays through Saturdays between the hours of 8:00 A. M. and 5:00 P. M. Moving vans and trucks used for this purpose shall only remain on condominium property when actually in use.

19. Repair, construction, decorating or re-modeling work shall only be carried on Mondays through Saturdays between the hours of 8:00 A. M. and 5:00 P. M.

20. These Rules and Regulations shall apply equally to owners, their families, guests, staff, invitees and lessees.

21. The Board of Directors of the Association may impose up to a \$100.00 fine for each violation of these Rules and Regulations or any of the condominium documents with each day of violation being a separate violation.

22. Hurricane shutters or protective window film are permitted in accordance with plans and specifications adopted from time to time by the Board of Directors.

23. These Rules and Regulations do not purport to constitute all of the restrictions affecting the condominium property. Reference should be made to the Condominium documents.

24. **FLOORING** - Each unit owner who elects to install in any portion of his unit hard surface flooring materials (i.e., tile, marble, wood) shall first be required to install an approved sound underlayment material equivalent to 1/4 inch of cork and perimeter sound isolation material installed in accordance with the procedures as generally provided below. Each unit owner is required to submit for approval to the Board of Directors or its representative the proposed hard surface floor underlayment material. Written approval for the proposed materials is required prior to installation of hard surface flooring, and then the installed sound proofing must be inspected and approved prior to installation of the hard flooring. Installation procedures shall meet or exceed the following:

A. Isolation Barrier

1. At the perimeter of the entire floor, and the periphery of all protrusions to that floor; fiberglass board (6-15 pcf) not less than 3/8 of an inch (9.525 millimeters) thick, to minimize flanking, should be used within 1/4 inches (6.35 millimeters) of the finished surface.

2. Closed cell polyethylene foam (2.7 - 9 pcf) not less than 1/4 of an inch thick (6.35 millimeters) may also be used as the perimeter isolation barriers.

3. The fiberglass board of the polyethylene foam can be cut into strips and held in place with a few spots of acoustical sealant. If the strips are too tall, they can easily be trimmed within the 1/4 inch of the finished surface after the tile is grouted, therefore keeping any hard residue out of the perimeter grout joints.

B. After the tile is set and grouted, additional time should be spent to check the perimeter of the entire floor and the periphery for any protrusions such as pipes, so as not to have any of the mortar, bond coat, or grout, touching the walls or any protrusions that penetrate the floor. Should any of the hard material from the installation make contact between the tile or setting bed and the wall, or a penetrating protrusion, a large reduction in the sound rating will occur. After grouting, but before the edges are caulked, trim the polyethylene sheeting back to the top of the fiberglass or polyethylene foam edging.

C. A sealant is required at the perimeter of the entire floor, and the periphery of all protrusions to that floor.

1. This joint shall be 1/4 inch wide (6.35 millimeters) from the finished top of the tile. This joint must be filled with an elastomeric sealant or an acoustical sealant. Hard grout is unacceptable.

2. This caulking can be done before or after grouting as long as the hard grout is left out of the joint between the floor and the wall and around the periphery of any protrusion.

3. If USG acoustical sealant is used, the joint can be painted to conform with the color of the grout used in the field.

4. Dow-Corning and G.E. Silicone sealant comes in a variety of colors to harmonize with the color of the tile.

B. RULES FOR OWNER PARTICIPATION IN BOARD OF DIRECTORS MEETINGS, A BUDGET COMMITTEE MEETING AND A MEETING OF ANY COMMITTEE AUTHORIZED TO TAKE ACTION ON BEHALF OF THE BOARD; AND OF THE LOCATION FOR POSTING NOTICES OF MEETINGS

I. THE RIGHT TO SPEAK:

1. To the maximum extent practical, the posted Board meeting agenda for each meeting shall list the substance of the matters and actions to be considered by the Board.

2. A parliamentary uniformly applied procedure such as Robert's Rules of Order shall govern the conduct of the Corporate meetings when not in conflict with the Declaration of Condominium, the Articles of Incorporation or the By-laws.

3. After each motion is made and seconded by the Board members the meeting Chairperson will permit owner participation regarding the motion on the floor, which time may be

limited depending on the complexity and effect on the Association.

4. Owner participation will not be permitted after reports of officers or committees unless a motion is made to act upon the report, or the Chair determines that it is appropriate or is in the best interest of the Association.

5. An owner wishing to speak must first raise his or her hand and wait to be recognized by the Chair.

6. While an owner is speaking he or she must address only the Chair, no one else is permitted to speak at the same time.

7. An owner may speak only once for not more than three (3) minutes and only on the subject or motion on the floor.

8. The Chair may, by asking if there be any objection and hearing none, permit an owner to speak for longer than five (5) minutes, or to speak more than once on the same subject. The objection, if any, may be that of a Board member only and if there is an objection then the question will be decided by a vote of the Board.

9. The Chair will have the sole authority and responsibility to see to it that all owner participation is relevant to the subject or motion on the floor.

II. THE RIGHT TO VIDEO OR AUDIO TAPE:

1. The audio and video equipment and devices which owners are authorized to utilize at any such meeting must not produce distracting sound or light emissions.

2. Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting in a location that is acceptable to the Board or the Committee.

3. Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording.

4. At least 24 hours advance written notice shall be given to the Board by any owner desiring to utilize any audio and/or video equipment to record a meeting.

III. LIMITATION ON THE ASSOCIATION'S OBLIGATION TO RESPOND TO WRITTEN INQUIRIES — The Association shall not be obligated to respond to more than one written inquiry from a unit owner filed by certified mail in any given 30 day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30 day period or periods.

IV. ALL NOTICES OF MEMBERSHIP, DIRECTORS AND COMMITTEE MEETINGS AT WHICH OWNERS ARE ENTITLED TO PARTICIPATE WILL BE POSTED IN THE LOCKED, GLASS FRONTED BULLETIN BOARDS AT THE TWO DUMPSTER LOCATIONS.

UR2920 PG1901

MARILE GREENLEE CITY PI
98 FEB 13 PM 2:33

ROETZEL & ADDRESS

A LEGAL PROFESSIONAL ASSOCIATION

2320 FIRST STREET
SUITE 1000
FORT MYERS, FL 33901-3419
941.338.4204 DIRECT
941.337.3850 MAIN
941.337.0970 FAX
rdeboest@ralaw.com

June 7, 2000

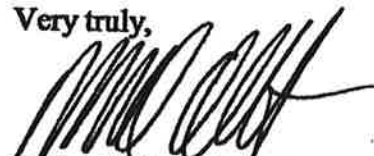
Bermuda Cays Condominium
Association, Inc.
c/o R & P Property Management
265 Airport Road South
Naples, FL 34104-3518

Re: Document amendment

Dear Board Members:

Enclosed please find a copy of the amendment to the Declaration and By-laws which has been recorded in the public record of Lee County. Please add this amendment to your Master set of governing documents. Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly,



Richard D. DeBoest, II

RDD/smp

cc: James Rosser, President

73740_1

Prepared by:
Richard D. DeBoest II, Esq.
Roetzel & Andress
2320 First St., Ft. Myers, FL 33901
(941) 337-3850

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED being President of BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, does hereby certify that the attached Amendments to the Amended and Restated Declaration of Condominium of Bermuda Cays and Amended and Restated Bylaws of Bermuda Cays Condominium Association, Inc., as recorded in O.R. Book 2920, Page 1819, et seq and as previously amended all of the Public Records of Lee County, Florida were duly adopted and ratified at a duly noticed meeting of the members of the Association held on the 3rd day of February, 2000. Said amendments were adopted by the required percentage of the voting interests of Bermuda Cays Condominium Association, Inc.

Dated this 30th day of March, 2000.

WITNESSES:

Dwight Miller
(Sign) Witness #1

Dwight Miller
(Print) Witness #1

Sharon Mann
(Sign) Witness #2

Sharon Mann
(Print) Witness #2

BERMUDA CAYS CONDOMINIUM ASSOCIATION, INC.

By: James Rosser
James Rosser, as President
28632 Starboard Passage, #102
Bonita Springs, Florida 34134

(CORPORATE SEAL)



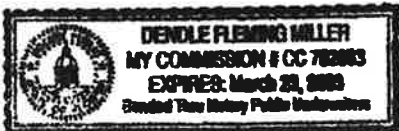
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 30th day of March, 2000, by James Rosser, President of Bermuda Cays Condominium Association, Inc., who is personally known to me or produced _____ as identification.

NOTARY PUBLIC

Sign Dwight Fleming Miller

Print Dwight Fleming Miller



State of Florida at Large (Seal)
My Commission Expires: 3-23-2003

AMENDMENTS TO THE AMENDED AND RESTATED DECLARATION OF
CONDOMINIUM OF BERMUDA CAYS, CONDOMINIUM

The Amended and Restated Declaration of Condominium of Bermuda Cays, a Condominium shall be amended as shown below:

Note: New language is underlined; language being deleted is shown in ~~struck-through~~ type.

5. CONDOMINIUM UNITS, BOUNDARIES, AND APPURTENANCES – Each unit and its appurtenances constitute a separate parcel of real property that may be owned in fee simple. The unit may be conveyed, transferred, and encumbered like any other parcel of real property, independently of all other parts of the Condominium property, subject only to the provisions of the condominium documents and applicable laws.

.

5.3.2. LIMITED COMMON ELEMENTS - Either the exclusive use or use in common with one or more other designated units of the limited common elements that may exist. Such elements include assigned unit parking spaces, balconies and lanais and all items set forth in Section 6 that are exterior to a unit and are expressly required to be maintained by the unit owner. Each unit shall have assigned to it one (1) limited common element covered parking space. The Board of Directors may adopt a uniform plan for enclosing screened balconies and lanais and owners may, at their own expense, enclose their balconies or lanais in conformity with such a plan. The enclosure of a balcony or lanai does not change its status as a limited common element.

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

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

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6.1.2. Water pipes up to ~~but not~~ and including the individual unit cut-off valve within the unit (if any).

.

6.1.8. All exterior building walls, including painting, caulking and waterproofing of the exterior walls and the painting, caulking and waterproofing of the exterior of the windows and window frames.

6.1.9. The maintenance, repair and replacement of the covered parking spaces.

.

6.2. UNIT OWNER MAINTENANCE – Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

6.2.1. Maintenance, repair and replacement of screens, windows and window glass and caulking and waterproofing of the interior of the windows and window frames.

.

~~6.2.11. The main water supply shut-off valve for the unit.~~

AMENDMENTS TO THE AMENDED AND RESTATED BY-LAWS OF BERMUDA CAYS,
CONDOMINIUM ASSOCIATION, INC.

The Amended and Restated By-Laws of Bermuda Cays Condominium Association, Inc., shall be amended as shown below:

Note: New language is underlined; language being deleted is shown in ~~struck-through~~ type.

7. FISCAL MANAGEMENT - Shall be in accordance with following provisions.

.

7.3. ASSESSMENTS - The shares of the unit owners of the common expenses shall be payable in quarterly installments in advance, and shall become due on the first day of each quarter and which shall become delinquent ~~40~~ 30 days thereafter. The Association shall have the right to accelerate assessments of an owner delinquent in the payment of common expenses. Accelerated assessments shall be due and payable on the date a claim of lien is filed in the Public Records of Lee County, Florida and may include the amounts due for the remainder of the fiscal year for which the claim of lien was filed.

.

7.9. COLLECTION - INTEREST; ADMINISTRATIVE LATE FEE; APPLICATION OF PAYMENTS - Assessments paid on or before ~~ten~~ thirty days after the date due shall not bear interest, but all sums not paid on or before ~~ten~~ thirty days shall bear interest at the highest lawful rate from time to time (now 18% per annum) from the date due until paid. In addition to such interest the Association may charge and administrative late fee in an amount not to exceed the greater of \$25.00 or 5% of each installment of the assessment for which payment is late. All payments upon account shall be first applied to interest, then the late fee, then to any costs and reasonable attorney's fees and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

AMENDMENTS TO THE AMENDED AND RESTATED DECLARATION OF
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.

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