

REVITALIZED AND REVIVED RESTATED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS OF SOUTHPORT ON THE BAY
(Substantial revision of the Declaration. See original Declaration for prior text)

This Restated Declaration of Covenants, Conditions, and Restrictions for Southport on the Bay is made this 10 day of September 1999, by a vote of more than two-thirds of the voting members of Southport on the Bay Property Owners' Association. Inc.

WITNESSETH:

WHEREAS, the real property described in Exhibit "A" attached hereto and incorporated herein by reference has restrictions imposed by the original Declaration of Covenants, Conditions and Restrictions of Southport on the Bay recorded in O.R. Book 1404, Page 1731, Collier County, Florida Public Records which is hereby amended as set forth in this Restated Declaration, the original Declaration and all amendments thereto being revoked. This Declaration is for the benefit of all owners of residential property within Southport on the Bay, which is the single-family subdivision made subject to this Declaration and amendments thereto. The Declaration is for the administration, maintenance, preservation, use, and enjoyment of such Properties as are subjected to this Declaration. Southport on the Bay Property Owners' Association, Inc., is to exercise the functions stated above and within this Declaration, which Association is not intended to be a "Condominium Association".

All the Properties subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. Areas of Common Responsibility shall mean and refer to the Common Area, together with those areas, if any, within or upon a Lot, the maintenance, repair, or replacement of which is the responsibility of the Association. The area of Common Responsibility shall be deemed to include the entrances, medians, signs, preserve areas, streets, walkways, and other similar improvements.

Section 2. Association shall mean and refer to Southport on the Bay Property Owners' Association, Inc., a Florida not for profit corporation, its successors, and assigns.

Section 3. The Board of Directors or Board shall be the elected body responsible for the administration of the Association.

Section 4. Bylaws shall refer to the Bylaws of Southport on the Bay Property Owners' Association, Inc.

Section 5. Common Area shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners and may include, without limitation, preserve areas, streets, walkways, or entrance areas.

Section 6. Common Expenses shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, the Articles of Incorporation of the Association, and such expenses as may be required by the Barefoot Beach Master Association.

Section 7. Dock Association means the Southport on the Bay Dock Owners' Association, Inc., a not-for-profit corporation, which is for the purpose of administering and operating the Southport docks and boat slips which are built or may be built. The Dock Association shall: (i) have membership limited to and required of those persons who collectively own an identified interest in the docks or boat slips, who must also own property in Southport, and (ii) provide for assessment powers secured by a lien on each such interest in a dock or boat slip.

Section 8. Lot shall mean a portion of the Properties other than the Common Area intended for any type of independent ownership and use as may be set out in this Declaration and as shown on the subdivision plats filed in the Public Records of Collier County, Florida, as the same may be amended from time to time. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 9. Majority means those eligible votes, Owners, or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number voting.

Section 10. Member shall mean and refer to a person or entity entitled to membership in the Association as provided herein.

Section 11. Mortgage means any mortgage, deed to secure debt, and any and all other similar instruments used for the purposes of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 12. Mortgagee shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Section 13. Mortgagor shall include the trustor of a deed of trust, as well as a mortgagor.

Section 14. Owner or Lot Owner shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation.

Section 15. Property or Properties shall mean and refer to the real property described in Exhibit "A" of this Declaration.

Section 16. Undeveloped Lot shall mean a lot upon which no single-family structure has been constructed, or a lot upon which a single-family structure has been constructed, but no certificate of occupancy has been issued by the local governmental authority.

ARTICLE II PROPERTY RIGHTS

Section 1: Owner's Easement of Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Lot, subject to the following rights:

- a. The right of the Association to suspend for a reasonable period of time the right of use of common areas (except maintaining the right of ingress and egress and to park), recreational facilities and the voting rights of any Owner or tenants, guest, or invitee when any assessment of the Association against that Owner's Lot remains unpaid for more than 90 days and more than thirty (30) days after notice.
- b. The right of the Association to dedicate or transfer all or any part of the Common Areas to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3) of the members agreeing to such dedication, or transfer has been duly recorded.

c. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities, and in aid thereof to mortgage said property; the rights of such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

Section 2: Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees.

Section 3: Signs. No vendor signs shall be permitted during construction. No other signs shall be displayed on a lot without the prior written consent of the Association. During periods of construction there shall be allowed a primary contractor's sign and permit board, neither of which shall exceed four square feet in area. The Association shall be allowed to maintain signs and remove non-complying signs.

a. Homeowners and realtors may display one single sided sign on the front of the property, no closer than 20 feet from the curb. The total height must not exceed 48 inches. The dimensions shall be 16 inches high by 21 inches wide. Material will be wood mounted on a 2 by 4 post. Sign colors shall be Flexbon shell white #5770W numbering on a sparcal dark brown #1509 background and post. Five lines of lettering, including the phone number, will be allowed. The words FOR SALE or FOR RENT are prohibited. This sign may be displayed 24 hours a day.

b. Open House Signs. Homeowners and realtors may display one two sided signs on the front of the property no closer than 4 feet from the curb. The dimensions shall be 18 inches high x 24 inches wide. Only the word "OPEN" will be permitted on this sign. The sign may be displayed only when someone is on the property to show the residence.

c. Undeveloped Lots. Undeveloped lots may display one single sided sign on the front of the property, no closer than 20 feet from the curb. The total height for the sign must not exceed 24 inches. The dimensions shall be 24 inches wide by 10 inches high. The color will be equivalent to sparcal dark brown #1509 background with Flexbon shell white #5770EW letters. Only the phone number in 4-inch numbers and name of real estate agent or owner in 2-inch letters is permitted on this sign.

ALL SIGNS AND LOCATIONS MUST BE APPROVED BY THE ASSOCIATION.

Section 4: Owner's Right to Ingress and Egress. Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his or her Lot and such right shall be appurtenant to and pass with the title to each Lot.

Section 5: Use of Lots. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used only for a single-family residence. Except as herein otherwise specifically provided, no structure shall be erected or permitted to remain on any Lot or building plot on said land other than one single family residence, one private minimum of two-car garage, and other outbuildings of like architectural character incidental to residential use of the premises. No trade or commercial activity shall be carried on upon any residential lots. In recreation areas construction of other than single family residences will be permitted. Lease or rental of a Lot for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with the provisions of this Declaration and with all reasonable rules and regulations as the Board of Directors may promulgate. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the Bylaws, and the rules and regulations adopted hereunder. Nothing

herein shall be construed to permit the use of any portion of any residence as an apartment for rent.

Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept in or upon any Lot or on the Common Area or any part thereof to increase the rate of insurance on the Properties or any part thereof over what the Association, but for such activity, would pay. Noxious, destructive, or offensive activity or any activity constituting an unreasonable source of annoyance shall not be conducted in or upon any Lot or on the Common Area or any part thereof, and the Association shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 6: Use of Common Area. No planting or gardening shall be done and no fences, hedges, or walls shall be erected or maintained upon the Common Area, except in accordance with the initial construction of the improvements located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the Owners of Lots may use the property outside the boundaries of their respective Lots only in accordance with reasonable regulations as may be adopted by the Association's Board of Directors or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

Section 7: Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of the Area of Common Responsibility, facilities located thereon, the individual Lots, and any other matters associated with the Properties. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of the rule. Such regulations shall be binding upon the Owners, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, canceled, or modified by the Board or by the Association in a regular or special meeting by the vote of a majority of the total votes in the Association. The Board shall have the authority to impose reasonable monetary fines and other sanctions, including suspension of the right to vote and the right to use the Common Area as provided in Article II, Section I. Monetary fines may be collected by lien and foreclosure, as provided in Article VII.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1: Membership. Every person or entity who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in the Association and shall be governed and controlled by the Articles of Incorporation and the Bylaws thereof. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership.

Section 2: Initial Control. The affairs of the Association shall be managed by a Board of Directors. The Board of Directors shall consist of five (5) Directors. The immediate past President, if he is not otherwise a Director, shall be a non-voting Director for the year following his Presidency. All Lot Owners shall elect the Board of Directors at the annual meeting.

Section 3: Voting. The Association shall have voting members with Lot owners entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as such members may determine among themselves but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV NO PARTITION

There shall be no judicial partition of the Common Area, nor shall any Owner or any other person acquiring any interest in the planned development or any part hereof, seek judicial partition thereof. Nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

Any such Subsequent Amendment shall be signed by the President and the Secretary of the Association, and the owner of the properties being annexed, and any such annexation shall be effective upon the filing for record of such amendment unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Members of the Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the Bylaws of the Association for regular or special meetings, as the case may be.

ARTICLE V RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto, if any), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and the Bylaws.

The responsibilities of the Association shall include operation, control and maintenance of all roads not maintained by Collier County and of the surface water management systems within or upon the Properties.

a. The Association shall maintain and keep in good repair the Area of Common Responsibility, which responsibility shall be deemed to include the Common Area and the maintenance and repair of such utility lines, pipes, wires, glass, conduits, and systems which are a part of the Common Area. The Association shall also maintain and repair the surface water management system, entrance wall, sign, median and other similarly related improvements to the entrance of the property.

The maintenance of the Common Area shall be deemed to include, but not be limited to, maintenance, repair, and replacement, subject to the insurance and casualty loss provisions contained herein, at the Association's sole cost and expense, of all trees, fences, shrubs, grass, parking spaces, walks, signs, entrance wall and other improvements situated upon the Common Area.

b. In the event that the Board of Directors of the Association by a two-thirds (2/3) vote, determines that (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, repair, or replacement of items for which he or she is responsible hereunder; or (ii) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for

by insurance, in whole or in part, then, in that event, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense; the notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary.

The Owner shall have fifteen (15) days within which to complete the maintenance, repair, or replacement or, in the event that such maintenance, repair, or replacement is not capable of completion within the fifteen (15) day period, to commence such work which shall be completed within a reasonable time.

If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 2. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration. The Association may, but shall not be required to, arrange as an Association expense with third parties to furnish water, trash collection, sewer service, and other common services to each Lot.

Section 3. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board acting on behalf of the Association, shall accept any real property or personal property, leasehold, or other property interest which are located within the properties described in Exhibit "A".

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or by the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 5. Enforcement. In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to take such action. All costs of such abatement or removal including reasonable attorney's fees shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Section 6. Right of Entry. The Association shall have the right, in addition to and not in limitation of all the rights it may have, to enter onto lots for emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all sheriffs, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties and, except in an

emergency situation, entry shall only be during reasonable hours and after reasonable notice to the owner or occupant.

Section 7. Owner's Responsibility. Except as provided in Section 1 of this Article, all maintenance of a Lot and all parts of the residence thereon shall be the responsibility of the Owner, and each Owner shall maintain and keep in good repair their Lot and improvements.

ARTICLE VI ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Except as hereinafter more fully provided, each Owner of a Lot is hereby deemed to covenant by acceptance of his deed for such Lot to pay to the Association: (1) annual assessments and (ii) special assessments for capital improvements and other expenditures that the Association deems appropriate, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The Annual and Special Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Each Member expressly covenants by acceptance of a Lot deed that liens may be placed against his Lot in the Properties for nonpayment of assessments.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Members of the Association and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Properties, which may include but are not limited to performance of the following duties and the payment of:

- a. Improvements, maintenance, and repair of the Area of Common Responsibility.
- b. Water, electrical lighting, and other necessary utility services, if any, for the Area of Common Responsibility;
- c. Fire and other hazard insurance covering the full insurable replacement value of the Common Areas with extended coverage;
- d. Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees, or tenants of any Owner arising out of their occupation and/or use of the Area of Common Responsibility. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association;
- e. Worker's compensation insurance to the extent necessary to comply with the Florida Statutes, and any other insurance deemed necessary by the Board of Directors of the Association.
- f. Acquisition of equipment for the Area of Common Responsibility as may be determined by the Association, including without limitation, all equipment, and personnel necessary or proper for use of the Area of Common Responsibility;
- g. Operation, repair, and maintenance of the roads, if the same is not the responsibility of Collier County;
- h. Operation, repair, and maintenance of the surface water management system of the Properties, including but not limited to drainage, utility and maintenance easements and retention areas, as described on the subdivision plat;
- i. Operation, repair, and maintenance of entranceway and signs;
- j. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes or assessments which the Association is

required to secure or pay pursuant to the terms of this Declaration or By-Laws, or pursuant to the terms of this Declaration or By-Laws, or which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the Properties, for the benefit of the Owners or for the enforcement of these restrictions.

Section 3. Annual Assessments; Due Date; Assessment Period. The Annual Assessments provided for herein shall be due on the first day of every calendar year. They shall be paid annually, in full and in advance, except that the Assessment Period may be changed from time to time at the discretion of the Board of Directors.

The Board, in accordance with the requirements for a change of an Annual Assessment as provided in this Article VI, may change the budget and level of Annual Assessments at a duly constituted meeting of the Board. For each twelve (12) month period thereafter commencing on the first day of January (hereinafter called the "Assessment Year"), the Annual Assessments may be adjusted by vote of the Board as set forth in Section 6 of this Article, provided that the Annual Assessments shall be sufficient to meet the obligations of the Association.

Section 4: Special Assessments. In addition to the Annual Assessments authorized by Section 3 hereof, the Board may levy in any Assessment Year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Area of Common Responsibility, including the necessary fixtures and personal property related thereto, or for other purpose deemed appropriate by the Association. The Board may levy a Special Assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner and his or her Lot into compliance with the provisions of the Declaration, the Amendments thereto, the Articles, the Bylaws, and the Association Rules and Regulations. The due date of any Special Assessment under this Article shall be fixed in a resolution authorizing such assessment.

Section 5: Change in Basis and Maximum of Annual Assessment. Subject to the limitations of Sections 3 and 4 hereof, and for the periods therein specified, the Board may change the basis and maximum amount of the assessments fixed by Section 4 hereof prospectively for any such period, provided that written notice containing a copy of the newly adopted budget outlining the assessment change is sent to all Members at least thirty (30) days in advance of the effective date of the adopted change.

Section 6: Duties of the Board of Directors. The Board of Directors of the Association shall prepare a roster of the Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment for each Assessment Year shall thereupon be sent to every Owner at least thirty (30) days prior to the commencement of the Assessment Year.

The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether an Assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7: Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association; Late Fees; Resale Certificate. If an assessment is not paid within 30 days of the date when due, such assessment shall then become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such Lot in the hands of

the then Owner, his heirs, devisees, personal representatives, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation provided, however, that no voluntary sale of any Lot shall be effective, nor shall any marketable title be conveyed unless and until the Seller has obtained from the proper officers of the Association a certificate, attesting to the fact that the Seller has paid all assessments to date. If no such certificate is obtained, the Purchaser shall be conclusively presumed to have assumed such past due assessments and shall become forthwith liable, therefore. The Owner requesting the certificate shall pay to the Association a reasonable sum to cover the costs of examining records and preparing the certificate.

If the assessment is not paid within thirty (30) days after the date due, the assessment shall bear interest from the date due at the annual rate of 18 percent, and the Association may bring an action at law against the Owner personally obligated to pay the outstanding assessments and/or bring an action to foreclose the lien against the property. There shall be added to the amount of such assessment all costs of collection, including, but not limited to, the cost of preparing and filing the complaint in such action, the cost of any and all attorney's fees incident to collection whether or not suit is brought, including attorneys' fees on appeal. In the event a judgment is obtained, such judgment shall include interest on the assessments as provided above and a reasonable attorneys' fee, together with costs incident to the action.

In addition to the foregoing remedies, the Board of Directors may assess a "Late Fee" of 5 percent of the payment, when the payment is more than thirty (30) days delinquent, for the purposes of helping defray collection costs.

Section 8: Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage, now or hereafter placed upon the Properties subject to assessment; provided, however, that when a First Mortgagee of record, or the purchaser, obtains title to such property as a result of a deed given in lieu of foreclosure thereof, such acquirer of title and his successors and assigns shall not be liable for the assessments by the Association chargeable to the former Owner of such property which become due and payable prior to the recording of such mortgage. Such sale or transfer shall not release such property from liability for any assessments thereafter becoming due, or from the lien of any such assessment. Any such assessment shall be subordinate to the lien of a First Mortgage placed upon the Properties prior to the time of the recording of such subsequent assessment lien.

Section 9: Dock Assessments. The improvements, maintenance and repair of the docks and its appurtenant facilities shall be maintained as an area of common responsibility. The primary obligation for the collection of the assessment obligation on said docks and appurtenant facilities shall be with the Dock Association. However, in the event the Dock Association should fail or neglect to collect said assessments, the Association shall have all lien rights and rights of enforcement as provided in this Article against any persons having an interest in the docks or boat slips therein.

Section 10: Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent any easement or other interest therein is dedicated and accepted by the local public authority and devoted to the public use; (b) and any easements granted to a non-profit corporation providing utility service to the Properties.

ARTICLE VII

ARCHITECTURAL REVIEW BOARD AND LAND USE RESTRICTIONS

Section 1: Members of Committee. The Architectural Review Board, sometimes referred to in this Declaration as the ARB, shall consist of a minimum of three (3) members. Each member of the ARB shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the ARB may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the ARB.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Architectural Review Board.

No construction, which term shall include within its definition staking, clearing, excavating, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this section until the requirements thereof have been fully met, and until the approval of the ARB has been obtained.

Section 2: Review of Proposed Construction. No new structure or building or site construction, and no modifications, additions, or alternations to existing structures, shall commence or be erected until the same shall have been submitted and approved in writing by the ARB. The ARB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the Properties as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable.

The goal of the Architectural Review Board will be to develop a community where continuity and low contrast between adjacent residences occurs. The ARB may condition its approval of proposals and plans and specifications as it deems appropriate and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARB may also issue rules or guidelines setting forth procedures for the submission of plans for approval.

The ARB may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARB of all required plans and specifications, the ARB may postpone review of any plans submitted for approval. All home plans submitted to the ARB must be certified by an architect licensed in Florida.

The ARB shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and if not rejected within such 30-day period, said plans shall be deemed approved. The ARB shall also specify a time limitation for the completion of any work approved under this Article.

All construction, changes and alterations shall also be subject to all applicable permit requirements and to all applicable governmental laws, statutes, ordinances, rules, regulations, orders, and decrees. Final written approval of the ARB must be obtained prior to making application for a building permit from Collier County. Any decision of the ARB may be appealed to the Board within fifteen (15) days from the date of rendition of the decision of the ARB pursuant to procedures established by the Board.

Section 3: Meetings of the ARB. The ARB shall meet from time to time as necessary to perform its duties hereunder. Notice of meetings must comply with the requirements for notice of a

Director's meeting as set forth in section 3.8 of the Bylaws. The ARB may from time to time, by resolution unanimously adopted in writing, designate an ARB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARB, except the granting of variances pursuant to section 8 hereof. In the absence of such designation, the vote of the majority of those present at an ARB meeting shall constitute an act of the ARB.

Section 4: No Waiver of Future Approvals. The approval of the ARB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 5: Compensation of Members. The members of the ARB shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. The ARB, however, shall have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its function. All expenditures of the ARB are subject to the prior written approval of the Board of Directors.

Section 6: Noncompliance. In the event any work for which approved plans are required under this Article VII is not completed in substantial compliance with said approved plans, the ARB or its duly authorized representatives shall notify the applicant in writing of such noncompliance specifying the particulars of noncompliance and requiring the Applicant to remedy the same within twenty-one (21) days. If, upon the expiration of twenty-one (21) days from the date of such notification, the Applicant shall have failed to remedy such noncompliance, the ARB shall notify the Board in writing of such failure. The Board shall then determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than twenty-one (21) days from the date of announcement of the Board ruling. If the applicant does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvements or remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant to the Association, the Board shall levy a special assessment for noncompliance against such Applicant's lot for reimbursement.

Section 7: Non-Liability of ARB Members. Neither the ARB nor any member thereof, nor its duly authorized ARB representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance or non-performance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member. In that case only the member acting in bad faith or guilty of willful misconduct shall be liable therefor. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the properties. The ARB shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be

deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 8: Variance. The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require. Such variance must be evidenced in writing which must be signed by at least two (2) members of the ARB. If such a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions covered by the variance, nor shall it affect the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

Section 9: Attorneys' Fees. For all purposes necessary to enforce this Article, the Association shall be entitled to collect reasonable attorneys' fees, court costs and other expenses against the Owner of a Lot causing the fees, whether or not litigation is instituted, and the Board may assess such amounts in the form of a special assessment for noncompliance.

Section 10: Land Use Restrictions. In order to maintain the standards of community design and environmental protection and to ensure a degree of uniformity and compatibility for the mutual benefit of the property Owners the following land use restrictions are adopted for the achievement of the suited goals. In particular, the philosophy of development includes the ability to maintain an aesthetically pleasing atmosphere throughout the community and the preservation of aesthetic qualities alone shall be sufficient to trigger the enforcement provisions set forth herein. Essential to the development plan are the preservation and encouragement of the lush tropical vegetation native to southwest Florida which is deemed necessary and desirable to achieve the aesthetic qualities sought.

- a. Antenna/Wind Turbines. No aerial or antenna shall be placed or erected upon any Lot or affixed in any manner to the exterior of any building in the Properties without the written approval of the ARB, it being the intent that such service shall be provided by cable television. Satellite dishes are only allowed so long as they do not exceed 18 inches in diameter and the location is approved by the ARB. Wind turbines or similar structures are expressly prohibited.
- b. Boats and Motor Vehicles. No boats, recreational vehicles, trucks with commercial or other lettering, no trucks which have more than two axles or four wheels or which are dump or panel trucks or other non-passenger motor vehicles shall be placed, parked, or stored upon any portion of a Lot except where totally enclosed within the garage, nor shall any maintenance or repair be performed on any boat or motor vehicle upon any Lot.
- c. Trees. No tree or shrub, the trunk of which exceeds four inches in diameter, shall be cut down or otherwise destroyed without the prior express written consent of the ARB.
- d. Artificial Vegetation. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot.
- e. Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the dwelling.

- f. Landscaping. A basic landscaping plan for each home must be submitted to and approved by the ARB. All shrubs, trees, grass, and plantings of every kind shall be kept well maintained, properly cultivated, and free of trash and other unsightly material. Landscaping in accordance with Article VIII of this Declaration, as approved by the ARB, shall be installed no later than issuance of a certificate of occupancy sixty (60) days following occupancy of, or completion of, any building, whichever occurs first. All portions of Lots not improved with structures or paving shall be kept as lawns or grass, except those portions planted with trees, shrubs, bushes, and other plantings. Grass, trees, shrubs, bushes, or plantings shall extend to the road right-of-way. In addition, all lands forming portions of a public right-of-way between the boundary of a Lot and the pavement installed within the right-of-way shall be grassed by the adjacent abutting Owner and maintained by him as a portion of his lawn. Rock or gravel yards are prohibited.
- g. Exterior Materials and Colors. Exterior surfaces may be of stucco, brick, cedar, wood, high grade vinyl or natural materials which shall be approved by the ARB. Siding materials such as T-111 are expressly prohibited. Further, mill finished windows and solar reflective glass are specifically prohibited. The variety of materials used for a building should be kept to a minimum. All materials should be used only in the manner commonly accepted for that particular material. The long-term implications of weathering and maintenance should also be considered when selecting materials.
- No dark colors shall be permitted and colors shall be harmonious and compatible with colors of natural surroundings and other adjacent buildings. Proposed colors for exterior surfaces should not be discordant with the colors already established in the community or individual neighborhood. Natural materials should be protected but remain natural. Like the material requirements, the variety of colors should be kept to a minimum on a single building or cluster of related structures. The ARB shall have the sole right to approve or disapprove materials and colors and may make such decisions on purely aesthetic grounds, based solely on its own judgment.
- h. Nuisances. All lawns shall be mowed and edged along the curb at reasonable intervals. No unsightly growth shall be permitted to grow or remain upon any Lot and no refuse pile or any other unsightly object shall be allowed to be placed or remain anywhere thereon. In the event any Owner shall fail or refuse after a fifteen (15) day notice mailed to his last known address to keep his Lot mowed, neat, and trim, and free of such unsightly growths or objects, then the Association may enter the Lot and remove the unsightly growth and objects and/or mow the lawn at the expense of the Owner and such entries shall not be deemed a trespass. Said expense shall be added to and become part of the assessment to which said Lot is subject.
- No Owner or tenant shall make or permit any disturbing noises including the loud playing of radios, recording amplifiers or musical instruments between the hours of 10:00 p.m. and 8:00 a.m. that will interfere with the rights or comfort of other Owners.
- i. Garbage Pickup. All owners shall subscribe to and use the mandatory garbage and yard waste pickup service provided.
- j. Building Exterior. Identical residences (those residences that have the same or reversed floor plans) shall have at least three (3) lots separating them. Further, no residence shall be constructed next to an adjoining residence which has a substantially similar entry or frontal view. All windows, porches, balconies, and exteriors of all buildings on any Lot shall at all times be maintained in a neat and orderly manner. All awnings, canopies, shutters, or other

appendages to structures shall be prohibited except as approved in writing by the ARB. The cavity below the living space of a residence, being the area between the actual ground level and the first habitable floor of the residence, shall be obscured by some form of wall such as concrete blocks, wood frame or such other screening materials as may be approved by the Architectural Review Board. Said wall or other screening shall provide, in the sole discretion of ARB, 90% visual obscurity of said cavity.

k. Multiple Lots and Subdividing. Two or more adjacent Lots may be used as a single building site with the approval of the ARB. However, such a site may not be subdivided without the written consent of the Board, and no single Lot may be subdivided under any circumstances without the written consent of the Board.

l. Roof and Building Height. The maximum height of the roof or any element of the building, excluding chimneys, flues, or vents, shall be forty-five (45) feet above the minimum required flood plain elevation. The minimum roof slope allowed shall be a pitch of 6:12. The purpose of such height restriction is to preserve views and aesthetics for the overall benefit of the community. Approved roofing materials include high grade metal (either standing seam or batten), or tile (colors shall be subject to the approval of the ARB).

Upon building next to an existing structure where the roofing materials will be dissimilar, there must be provided a landscaping buffer with trees to a height of such sufficiency that the visual continuity between roof lines will be broken and not be continuous.

m. Easements. Owners may not grant easements on their Lots without written consent of the ARB.

n. Setbacks. The following minimum setbacks shall be observed:

(i) Front yard - 20 feet or $\frac{1}{2}$ of the building height, as defined by the county code, whichever is greater.

(ii) Side yard – 7 $\frac{1}{2}$ feet or $\frac{1}{2}$ the building height, as defined by the county code, whichever is greater.

(iii) Rear yard (non-waterfront) - 25 feet or $\frac{1}{2}$ the building height, as defined by the county code, whichever is greater.

(iv) Rear yard (waterfront) - 30 feet or $\frac{1}{2}$ the building height, whichever is greater, as defined by the county code, whichever is greater.

The minimum setbacks shall not limit the ARB, should it determine that greater setbacks are required on any Lot for any reason.

o. Square Footage. All single-family dwelling lots shall have a minimum of 2,500 square feet under air conditioning. An enclosed attached garage shall be maintained, sufficient to store at least two cars. The garage shall be in addition to the minimum square footage requirement and shall not be converted to other uses. Carports are expressly prohibited.

p. Pets. Domestic dogs and cats will be permitted so long as they do not become an annoyance to other residents. Livestock shall not be permitted. Other pets may be permitted only with the written approval of the Board. The Board shall have the unqualified right to require the removal of any animal or pet which becomes an annoyance or nuisance.

q. Fences. Hedges and Walls. All air conditioning equipment and pool equipment shall be screened from the view of adjoining residences and streets by privacy walls, fences, or landscaping; provided that no fence, hedge, wall, or other dividing instrumentality shall be construed or maintained on any Lot unless approved in writing by the ARB. All ground level area walls located within the piling perimeter shall be of frangible construction.

r. Violations or Restriction. The Association, or any Owner, shall have the right to enforce these covenants and restrictions by any proceedings at law or in equity against any person

- violating or attempting to violate any covenant or restriction, to restrain a violation, to require specific performance and/or to recover damages and to enforce any lien created by these covenants; failure by the Association or any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.
- s. Temporary and Accessory Structures. No temporary or accessory structures of any kind including pools, sheds, docks, tents, trailers, boathouses, barns, or treehouses shall be built or placed on any Lot at any time without the prior written approval of the ARB. Basketball hoops are allowed and shall be properly maintained and may be used only from 8:00 a.m. to 8:00 p.m.
 - t. Leases. Any and all lease agreements between an Owner and a lessee of such Owner shall be in writing, shall provide for a term of not less than sixty (60) days, there shall not be more than three leases in a calendar year; and leases must provide or are deemed to provide that the lessee shall be subject in all respects to the terms and provisions of this Declaration and that any failure by the lessee under such lease agreement to comply with such terms and conditions shall be a material default and breach of the lease agreement. The lease agreement shall also state the party to whom bills shall be sent for the assessments against the lot which are levied in accordance with this Declaration and the By-Laws of the Association. It shall be the obligation of all Owners to supply the Board with a copy of said written agreement at least ten (10) days prior to the date of possession by the lessee. No residence shall be used or sold on a "time-share" basis. The terms required for a lease by this section apply to all Lot leases even if not specifically contained in the lease.
 - u. Trash Disposal. No Lot shall be used as a dumping ground for rubbish, trash, garbage, or other waste matter. Garbage or other waste shall be kept in sanitary containers and screened from public view. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No incinerator or any outdoor burning shall be permitted. The type of sanitary containers, screening, and location of same shall have the written approval of the ARB.
 - v. Mailbox. All mailboxes shall be uniform and in accordance with the design approved by either the ARB or by the Southport Board of Directors.
 - w. Driveways. All driveways shall be constructed only of brick, brick pavers, concrete, Bomonite, rock aggregate or crushed shell approved by the ARB. Curbed edges shall be necessary to retain loose material, such as aggregate, when used for a parking area. Loose aggregate will not be allowed to extend into the community road right-of-way. An apron must be used from the gutter to the property line. The material used must be of the same material as that which is used for the border material.
 - x. Corner Lots. Corner lots include lots 18, 19, 41 and 104 as designated on the subdivision plat, and shall be deemed to have two (2) front yards, with front yard setbacks observed adjacent to each street.
 - y. Construction. During any construction activity within the neighborhood, the construction area shall be maintained in a neat and orderly manner. No temporary trailers shall be placed on any site without the prior written approval of the Association. Construction vehicles shall be parked so as not to block or interfere with the use of the streets or roads within the neighborhood. Construction and working hours shall be in accordance with rules promulgated by the Board or ARB.
 - z. Foundation/Pilings. All construction plans for residential units, whether for purposes of initial construction or modifications or additions to existing structures, shall be prepared over the

seal of a licensed architect or engineer as may be required by any county construction requirements. Foundation systems shall be designed by a licensed architect or engineer, shall be of either wood or concrete and shall otherwise be in compliance with all local, state, and federal regulatory agencies. Such plans shall also be consistent with all Planned Unit Development (P.U.D.) requirements affecting the property.

- aa. Boat Docks. The design and construction of any boat docks or similar structures shall be subject to the provisions of Article VII - Architectural Review Board. Renting or leasing of boat docks or boat spaces, independent of the entire property, is expressly prohibited except members of the Southport on the Bay Dock Owners' Association, Inc., may rent but only to other Southport residents.
- bb. Reflective Glass/Solar Panels. Reflective glass shall not be installed in any structure. Solar panels may be used providing they are not visible from the street.
- cc. Filling/Grading. All property owners shall be responsible for filling and grading home sites so as to preserve the function and intent of the master site drainage plan and to ensure that the plan is acceptable to the South Florida Water Management District. Compliance shall be sufficiently indicated on the project site plan before approval by the ARB.
- dd. Vehicles. Unlicensed motorized vehicles, with the exception of golf carts, are prohibited in the community.
- ee. Lawn Services. Lawn services or landscapers and their working hours are governed by regulations promulgated by the Board or ARB.
- ff. Garage Sales. Garage sales are expressly prohibited with the exception of one community-wide sale each year to be scheduled and advertised by the Board of Directors.

ARTICLE VII

LANDSCAPING REQUIREMENTS

The landscaping design requirements for the Properties are established to maintain compatibility throughout the community by preserving the natural character of the property and to ensure that new landscape plantings are functional and well suited to their location.

These landscape guidelines have been prepared as an aid to each Lot Owner in preparing their landscape plan. It is essential that close attention be paid to the protection and enhancement of as much of the natural setting as possible, preserving the best of the botanic and scenic features of the Lot, conserving ground forms and native vegetation with a harmonious residence, pleasant paths of movement and attractive site use areas.

The Lot Owner, while preserving the landscape integrity of the community, may add an individual touch to the Lot as long as such additions are in conformity with the requirements and spirit of the protective covenants.

The major functions for which landscaping is to be used include:

1. Architectural: Privacy control, screening objectionable views and defining paths of movement;
2. Engineering: Erosion control, glare reduction and noise control;
3. Climate Control: Heat reduction (shade) and wind protection; and
4. Aesthetic Uses: Maintaining community visual continuity through the enhancement and complementing of architecture using background and accent plantings.

These functions are to be derived from the careful selection and placement of plant materials. The Lot Owner is responsible for the providing and maintaining of landscaping to the street pavement.

It is imperative that these landscape guidelines be followed to maintain visual continuity throughout the Properties. This continuity can be achieved through careful landscape

planting and by avoiding the installation of plant material that is out of character with the plant palette allowed by the ARB.

Section 1: Plant Materials. All plant material outlined in the established landscape plant palette as approved by the ARB shall be chosen with respect to soil type, sun or shade tolerance and specific purpose. Plant quality, measurements, branching and grading shall meet or exceed Standards of Florida No. 1, as presented in “Grades and Standards for Nursery Plants”, Florida Department of Agriculture.

Section 2: Native Vegetation. The preservation and utilization of native trees and shrubbery is strongly encouraged and adjustment of these standards for such plant material will be permitted if incorporated and compatible with the overall landscape plan.

Section 3: Irrigation. A complete, underground automatic landscape irrigation system for all landscape areas shall be provided as part of the overall landscape plan. The irrigation system shall be designed to provide full ground coverage and to meet the peak moisture demand of all landscape material. However, this will not relieve any owner from their obligations herein.

The irrigation system shall also be designed and operated to prevent or minimize run-off and discharge of irrigation water onto roadways, driveways, native plant stands, adjacent properties which are not under control of the user. The system shall be maintained so as to be in optimum proper working order.

The irrigation system shall provide protection to native planting stands and irrigation water shall be directed away from such areas to avoid plant stress and decline.

Section 4: Landscaping. All landscaping shall be installed according to accepted commercial planting procedures. Adequately sized planting beds with fertile soil (free of limerock, pebbles or other construction debris) shall be used.

Lot Owners shall be responsible for the maintenance of the landscaping of their own sites. Plants shall be maintained in a healthy and growing condition or replaced with plants of equal size.

Section 5: Exotic Vegetation. Lot Owners are responsible for the removal of all exotic vegetation on their site including such species as Brazilian Pepper, Melaleuca, and Australian Pines.

ARTICLE IX MORTGAGEE RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in the Properties.

Should the Federal National Mortgage Association delete any of its requirements contained in this Article or make any such requirements less stringent, the Board, without approval of the owners, may cause an amendment to this Article to be recorded to reflect such changes. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration and to the Bylaws of Southport on the Bay Property Owners’ Association. Inc. Where indicated, these provisions apply only to eligible mortgage holders, as hereinafter defined.

Section 1: Notices of Action. An institutional holder, insurer, or guarantor of a first mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the lot number), (therefore becoming an eligible holder), will be entitled to timely written notice of:

- a. any proposed termination of the Association;

- b. any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;
- c. any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;
- d. any lapse, cancellation, or material modification of any essential insurance policy or fidelity bond maintained by the Association and not replaced; or
- e. any proposed action which would require the consent of eligible holders, as required in Sections 2 and 3 of this Article.

Section 2: Other Provisions for First Lien Holders. To the extent possible under Florida law:

- a. Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the eligible holders of the first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots, subject to mortgages held by such eligible holders are allocated, is obtained.
- b. Any election to terminate the Association after substantial destruction or a substantial taking in condemnation must require the approval of the eligible holders of first mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots, subject to mortgages held by such eligible holders, are allocated.

Section 3: Amendments to Documents. The following provisions do not apply to termination of the Association as a result of destruction, damage, or condemnation pursuant to Sections 2 (a) and (b) of this Article.

- a. The consent of at least sixty-seven (67%) percent of the votes of all Lots shall be required to terminate the Association.
- b. The consent of at least sixty-seven percent (67%) of the votes of all Lots shall be required to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:
 - (i) voting;
 - (ii) assessments, assessment liens, or subordination of such liens;
 - (iii) reserves for maintenance, repair, and replacement of the Common Area;
 - (iv) insurance or fidelity bonds;
 - (v) rights to use the Common Area;
 - (vi) responsibility for maintenance and repair of the Properties;
 - (vii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
 - (viii) boundaries of Lots;
 - (ix) leasing of Lots;
 - (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;
 - (xi) establishment of self-management by the Association where professional management has been required by an eligible holder; or
 - (xii) any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantor's, or insurers of first mortgages on Lots.

ARTICLE X
PROPERTY RIGHTS IN BOAT DOCKS

Section 1: Ownership. There are boat docks along and adjoining the Conservation Easement area and Little Hickory Bay. Southport on the Bay Property Owners' Association, Inc., and its successors in interest had all rights of ownership and use in and to the boat dock rights and use of same. Consistent with this right of ownership, Southport on the Bay Property Owners' Association, Inc., has made such conveyances or management agreements concerning the docks as it, in its discretion, deemed appropriate.

Section 2: Easements. There is hereby reserved for Southport on the Bay Property Owners' Association, Inc., its successors and assigns, and every person holding an identified interest in a dock or boat slip, an easement of ingress and egress, use and enjoyment in, over, upon, and across such common areas and Conservation Easement areas as may be necessary for access to said boat docks or walkways, or paths to said docks; together with the corresponding right to construct said walkways and paths. This right is subject to the following:

a. The right of the Dock Association, or the Association to grant easements in, over, upon, and across said dock facility upon such terms as it deems prudent.

Section 3: Rules and Regulations. Southport on the Bay Property Owners' Association, Inc., or the Dock Association may establish reasonable rules and regulations concerning the use of the docks and boat slip facilities. Such rules and regulations shall be binding upon the interest holders of such dock or boat slips and their families, guests, invitees, and agents.

ARTICLE XI
GENERAL PROVISIONS

Section 1: Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of twenty-five (25) years from the date hereof. Thereafter they shall be automatically extended for additional periods of (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2: Covenants Run with the Land. All restrictions, reservations, covenants, conditions, and easements contained in this Declaration shall constitute covenants running with the land; and all grantees, devisees, or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through, or under such persons agree to be bound by the provisions of (a) this Declaration of Covenants, Conditions, and Restrictions and (b) the Articles of Incorporation and By-Laws of the Association which will be the entity responsible for the operation and maintenance of the common area.

Section 3: Enforcement. The Association, or any Owner, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, and shall be entitled to recover all expenses, costs and attorneys' fees related thereto. Failure of the Association, or of any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions. All other provisions shall remain in full force and effect.

Section 5: Amendments. Covenants and restrictions of this Declaration may be amended by duly recording an instrument executed and acknowledged by two-thirds (2/3) of the voting members, provided that any amendment which would affect the surface water management system, including the water management portions of the common areas, must have the prior approval of the South Florida Water Management District. Provided, further, that this section shall not be used to change the residential character of the property in this subdivision.

Section 6: Subordination. No breach of any of the conditions herein contained or reentry by reason of such breach shall affect or render invalid the lien of any mortgage made in good faith and for value as to the properties or any Lot therein; provided, however, that such conditions shall be binding upon any Owner whose title is acquired by foreclosure, trustee's sale, or otherwise.

Section 7: Indemnification. The Association shall indemnify every officer and director of the Association against any and all expenses, including counsel fees, reasonably incurred by, or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers and directors may also be Members of the Association), and the Association shall indemnify and hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein is in addition to any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 9: Easements for Utilities.

- a. There are hereby reserved to the Association blanket easements upon, across, above, and under all property within the Properties for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the properties or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association might decide to have installed to serve the properties. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables, and other equipment related to the providing of any such utility or service should any party furnishing such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.
- b. All lots will be filled in a manner in keeping with the engineered drainage plan of the subdivision as approved by the South Florida Water Management District. All ditch culverts, if required, will have mitered end sections to be approved by the ARB.

c. No trees may be planted or maintained or remain in such a way as to interfere with public utility poles, wiring or drainage, or that may change the direction of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easements. The easement areas of each Lot and all improvements therein shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Association or any utility company maintaining such utilities shall have the right without prior notice to the Lot Owner, to enter the Lot and trim or remove the said tree or shrubbery so interfering.

Section 10: Authority of Southport on the Bay Property Owners' Association, Inc. The Association shall have the absolute power to veto all actions or proposed actions of the Dock Association if the Association reasonably concludes that such action or proposed action is improvident, and the Association may enjoin or otherwise prohibit such action or proposed action.

Section 11: Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 12: Conflict. In the event of any conflict among the provisions of the General Covenants and the provisions of this Declaration, the Associate reserves the right and the power to resolve any such conflict, and its decision shall be final.

BY: _____

William Zwicker, President

BY: _____

David Trimm, Secretary

ARTICLES OF INCORPORATION
OF
SOUTHPORT ON THE BAY PROPERTY OWNERS' ASSOCIATION, INC.
A Non-Profit Corporation

The undersigned, acting as incorporator of a non-profit corporation under Chapter 617 of the Florida Statutes, hereby adopts the following Articles of Incorporation for such corporation:

ARTICLE I
NAME

The name of the corporation (hereinafter called the Association) is Southport on the Bay Property Owners' Association, Inc.

ARTICLE II
DURATION

The period of duration of the Association shall be perpetual.

ARTICLE III
PURPOSES AND POWERS

By way of explanation and not of limitation, the purposes which the Association is formed are:

- A. To be and constitute the Association to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Southport on the Bay (hereinafter the Declaration), establishing a plan of development recorded or to be recorded in the Office of the Clerk of the Circuit Court of Collier County, Florida, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the Bylaws, and as provided by law; and
- B. To provide an entity for the furtherance of the interests of the owners in the development; and
- C. To provide for the operation and maintenance of the common property and the improvements thereon; and
- D. To promote the health, safety and welfare of the residents within the above-described development and such additions thereto as may hereafter be brought within the jurisdiction of the Association for such purpose.

In furtherance of its purposes, the Corporation shall have the following powers, which, unless indicated otherwise by the Declaration or Bylaws, may be exercised by the Board of Directors:

- A. All powers conferred upon not-for-profit corporations by common law and the statutes of the State of Florida in effect from time to time; and
- B. All the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the Bylaws, or the Declaration, including, without limitations, the following:
 - (1) to fix, levy and collect, and enforce payment by any lawful means of all charges and assessments pursuant to the terms of the Declaration; and pay all expenses in connection therewith, and all office and other expenses incidental to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied on or imposed against the property of the Association;
 - (2) purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, use, convey or otherwise deal in and with real or personal property, or any interest therein, wherever situated;

- (3) make contracts and incur liabilities, borrow money at such rates of interest as the Association may determine, issue its notes, bonds, and other obligations, and, subject to the consent by vote or written instrument of its members, secure any of its obligations by mortgage and pledge of all or any of its property, franchises, or income;
- (4) dedicate, sell or transfer all or any part of the common properties to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members.
- (5) merge and consolidate with other corporations both for profit and not for profit, domestic and foreign, provided that the surviving corporation is a corporation not for profit, and provided that any merger or consolidation shall have the assent of the members;
- (6) have and exercise any and all powers, rights and privileges that a non-profit corporation organized under Chapter 617 of the Florida Statutes by law may now or hereafter have or exercise;
- (7) to manage, control, operate, maintain, repair and improve property subjected to the Declaration or any other property for which the Corporation by rule, regulation, Declaration, or contract has a right or duty to provide such services;
- (8) to enforce covenants, conditions and restrictions affecting any property to the extent the Association may be authorized to do so under any Declaration of Covenants, Conditions and Restrictions or Bylaws;
- (9) to engage in activities which will actively foster, promote and advance the common interests of all Owners;
- (10) retain a management entity to perform any of the services or duties set forth above or in the Declaration;
- (11) annex Additional Property, however, real property submitted by the Developer to be added pursuant to the Declaration of Covenants, Conditions and Restrictions shall not require any approval or consent of the Association;
- (12) to act as agent, trustee or other representative of other corporations, firms or individuals, and, as such, to advance the business or ownership interests of such corporations, firms or individuals;
- (13) to sue and be sued;
- (14) to adopt, alter and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Corporation; provided, however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration;
- (15) to establish rules and regulations;
- (16) to provide any and all supplemental services as may be necessary or proper;
- (17)? the foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article III are independent powers, not to be restricted by reference or to inference from the terms of any other paragraph or provision of this Article III. The Association is organized and shall be operated in accordance with purposes set forth above. The activities of the Association will be financed by assessments against members as provided in the federation, and no part of any net earnings of the Association will inure to the benefit of any member.

ARTICLE IV
MEMBERSHIP

Every person or entity who is record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons or entities holding title merely as security for performance of an obligation, shall be a member of the Association. Voting membership shall be appurtenant to and may not be separated from ownership of a lot which is subject to assessment by the Association.

ARTICLE V
CLASSES OF MEMBERS

The Association shall have two classes of voting members as follows:

Class A: Class A members shall be all owners with the exception of Declarant, as such term is defined in the Declaration, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote of such lot shall be exercised as such members may determine among themselves, but in no event shall more than one be cast with respect to any lot owned by Class A members.

Class B: The Class B member shall be the Declarant as such term is defined in the Declaration, and shall be the sole class entitled to vote until the expiration of the period provided for in the Declaration.

ARTICLE VI
BOARD OF DIRECTORS

The business and affairs of the Corporation shall be conducted, managed and controlled by the Board of Directors. The Board shall consist of five members or spouses of members.

The method of elections and terms of office, removal and filling of vacancies shall be as set forth in the Bylaws. The Board may delegate such operating authority to such companies, individuals or committees as it, in its discretion, may determine.

ARTICLE VII
DISSOLUTION

The Corporation may be dissolved only as provided in the Declaration, Bylaws or by the laws of the State of Florida.

If the Association is dissolved, any property consisting of the surface water management system shall be conveyed to an appropriate unit of local government. If it is not accepted then the surface water management system must be dedicated to a similar non-profit corporation.

ARTICLE VIII
AMENDMENTS

These Articles may be amended as provided by the Florida Not for Profit Corporation Act, provided that no amendment shall be in conflict with the Declaration and provided further that no amendment shall be effective to impair or dilute any rights of members that are governed by such Declaration.

ARTICLE IX
INCORPORATOR

The name and address of the incorporator is as follows:

Kenneth Jay Gluckman – 4450 Bonita Beach Rd. Ste. 12, Bonita Springs, FL 33923

IN WITNESS WHEREOF, We, being the President and the Secretary of SOUTHPORT ON THE BAY PROPERTY OWNERS' ASSOCIATION, INC. have hereunto set our hands this _____ day of _____, 2021.

BY: _____

William Zwicker, President

BY: _____

David Trimm, Secretary

RESTATED
BYLAWS OF SOUTHPORT ON THE BAY PROPERTY
OWNERS' ASSOCIATION, INC.

(Substantial rewording of Bylaws. See Prior Bylaws for Former Text.)

1. Identity: These are the Bylaws of Southport on the Bay Property Owners' Association, Inc., a non-profit Florida corporation formed for the purpose of administering that single-family subdivision upon the lands described in the Declaration of Covenants, Conditions, and Restrictions of Southport on the Bay. (The corporation shall hereafter be referred to as the Association.)
 - 1.1 Office: The office of the Association shall be located in the subdivision, or in such other location in Collier or Lee County, Florida as the Board of Directors elects.
 - 1.2 Fiscal Year: The fiscal year of the Association shall be the calendar year.
 - 1.3 Seal: The seal of the Association shall bear the name of the Association, the word "Florida," and the year of establishment.
 - 1.4 Definition: The definition of words used in the Bylaws shall be the same as those definitions in the Declaration of Covenants, Conditions and Restrictions of Southport on the Bay.
2. Members' Meetings.
 - 2.1 Annual Members' Meetings shall be held at the subdivision or at such other convenient location as may be determined by the Board of Directors, at such hour and upon such date each year as may be determined by the Board, for the purpose of electing Directors and of transacting any business authorized to be transacted by the members.
 - 2.2 Special Members' Meetings shall be held whenever called by the President, Vice President or by a majority of the Board of Directors, or when called by written notice from thirty-three percent (33%) of the entire membership.
 - 2.3 Notice of Members' Meetings. Notice of the annual meetings shall be sent to each member by United States mail at least fourteen (14) days prior to the annual meeting. Written notice of the meeting shall also be posted in a conspicuous place in the subdivision at least fourteen (14) days prior to the annual meeting. All notice of meetings shall state clearly and particularly the purpose or purposes of the meeting.
 - 2.4 The Board of Directors shall also mail a meeting notice and copies of the proposed annual budget of common expenses to the members not less than fourteen (14) days prior to the meeting at which the budget will be considered.
 - 2.5 Notice required for a special meeting to elect a Director or Directors from the members is specified in Bylaws section 2.3.
 - 2.6 Notice of other special meetings not covered above shall be in writing and mailed to each member first class, postage prepaid not less than fourteen (14) days prior to the meeting.
 - 2.7 Quorum. A quorum at members' meetings shall be attained by the presence, either in person or by proxy, of persons entitled to cast in excess of fifty percent (50%) of the votes of members in good standing. If voting rights of any member are suspended pursuant to the provisions of the Declaration, these Bylaws, or applicable rules and regulations, the votes of such members so suspended shall not be counted for the purpose of determining the presence of a quorum; and the total number of authorized votes shall be reduced accordingly during the period of such suspension. Decisions made by owners of a majority of the Lots represented at a meeting at which a quorum is present shall be binding and sufficient for all purposes except an amendment to the documents which may by law or by

said documents require a larger percentage, in which case the percentage required in the documents or law shall govern.

- 2.8 Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting, at which a quorum shall have been attained, shall be binding upon all Lot Owners for all purposes, except where otherwise provided by the Declaration, the Articles or these Bylaws. As used in these Bylaws, the Articles or the Declaration, the terms “majority of the Lots Owners” and “majority of the members” shall mean a majority of the votes of members themselves and shall further mean more than fifty percent (50%) of the then total authorized votes present in person or by proxy and voting at any meeting of the Lot Owners at which a quorum shall have been attained. Similarly, if some greater percentage of members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of members and not of members themselves.
- 2.9 Proxies. Votes may be cast in person or by proxy. Every proxy shall be revocable at any time prior to being used at the pleasure of the person executing it. A proxy must be filed in writing, signed by the person authorized to cast the vote for the Lot (as above described), and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Holders of proxies need not be Lot Owners.
- 2.10 Adjourned Meetings. If any meeting of members cannot be held because a quorum has not been attained, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.
- 2.11 The order of business at annual members’ meetings, and, as far as applicable at all other members’ meetings, shall be except as otherwise decided:
- a. Election of Chairman of the meeting unless the President or Vice President of the Association is present; then he or she shall preside.
 - b. Calling of the role and certifying of proxies.
 - c. Proof of Notice of Meeting or Waiver of Notice.
 - d. Reading and disposing of any unapproved minutes.
 - e. Reports of Directors.
 - f. Reports of Committees.
 - g. Election of Directors.
 - h. Unfinished business.
 - i. New Business.
 - j. Adjournment
3. Board of Directors.
- 3.1 Membership. The affairs of the Association shall be managed by a Board of five (5) Directors, plus if he is not otherwise a member of the Board, the immediate Past President shall be a non-voting member for one year after his Presidency.
- 3.2 Designation of Directors shall be in the following manner:
- a. Except as to vacancies provided by removal of Directors by members, in the Board of Directors occurring between annual meetings of members shall be filled by a majority vote of the remaining Directors.
 - b. Any Director may be removed with or without cause by concurrence of a majority vote of the members of the Association, either by written agreement or at a special meeting of the members called for that purpose either by a majority of the Board of Directors or by thirty-three percent (33%) of the members. The vacancy in the Board of Directors so created shall be filled by members of the Association at the same meeting.

- 3.3 The term of each Director's service who is elected shall be for two years and shall extend until an annual meeting of the members and thereafter until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided. Terms shall be staggered so that two Directors are elected one year and three Directors are elected the other year.
- 3.4 The organization meeting of the newly elected Board of Directors shall be held at such place and time as shall be fixed by the Directors, provided a quorum shall be present.
- 3.5 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. A meeting of the Board occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all members except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege.
- 3.6 Special meetings of the Directors may be called by the President or by written request of two Directors.
- 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.
- 3.8 Notice of Meetings of the Board of Directors shall be posted conspicuously on the Association property forty-eight (48) hours in advance except in an emergency. If the Association does not post the 48 hours' notice of a Board meeting, the Board must mail or deliver to each member at least 7 days' notice of the meeting except in an emergency. If the Association has more than 100 members, instead of posting notice of each meeting the Association or Board may provide members with a schedule of Board meetings. An assessment may not be levied at a Board meeting unless the meeting notice includes a statement that an assessment will be considered and the nature of the assessment.
- 3.9 A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board. If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. This restriction on voting by proxy or secret ballot also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of Association funds, and to the Architectural Review Board.
- 3.10 The presiding officer at Directors' meetings shall be the President of the Board 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. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes.
- 3.11 Directors shall serve without pay, 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 Articles of Incorporation, Declaration of Covenants, Conditions and Restrictions, and these Bylaws shall be exercised exclusively by the Board of Directors, or officers or by its duly authorized agents, contractors, or employees subject only to the

approval by members when such is specifically required. Such powers and duties of the Directors include, but not be limited to, the following:

- 4.1 To make and collect assessments against members to defray the costs of the Association.
 - 4.2 To use the proceeds of assessments in the exercise of its powers and duties.
 - 4.3 The maintenance repair, preservation, replacement and operation of the Area of Common Responsibility.
 - 4.4 The reconstruction of improvements after casualty and the further improvements of the area of common responsibility.
 - 4.5 To approve or disapprove proposed transactions in the manner provided by the Declaration.
 - 4.6 To enforce by legal means the provisions of applicable laws, the Declaration, the Bylaws of the Association and the Regulations for the use of the Property in the Subdivision.
 - 4.7 To contract for management of the Association.
 - 4.8 To pay taxes and assessments which are liens against any part of the Association property other than individual Lots and the appurtenances thereto, and to assess the same against the Lot subject to such liens.
 - 4.9 To carry insurance for the protection of the Association and its property against casualty and liabilities.
 - 4.10 To pay the cost of all power, water, sewer and other utility services rendered to the common area.
 - 4.11 To employ personnel and designate other officers for reasonable compensation and grant them such duties as seems appropriate for proper administration of the purposes of the Association.
 - 4.12 To bring suit, execute contracts, deeds, mortgages, leases and other instruments by its officers and to own, convey and encumber real and personal property.
 - 4.13 The Directors may, pursuant to Florida Statutes Sections 617.10(3) and 617.305(2) suspend voting rights of a member whose Association assessments are delinquent in excess of 90 days, may suspend the rights of a member, his guests and tenants, to use common areas and facilities (other than ingress, egress and parking) and may impose fines in such reasonable sums as they deem appropriate not to exceed \$100 for each day of a violation and \$1,000.00 in the aggregate against Lot Owners for violations of the Association documents, including the Rules and Regulations, by Owners or their guests or lessees. No fine or suspension shall be imposed until the Unit Owner(s) has been given 14 days' notice of the right to a hearing before three (3) members appointed by the Board who are not officers, directors or employees of the Association or related to them, and if requested a hearing is given.
 - 4.14 To make reasonable rules and regulations.
5. Officers.
- 5.1 The executive officers of the Association shall be the President, a Vice President, a Secretary and a Treasurer, 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 or Assistant Secretary.
 - 5.2 The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of a corporation.

- 5.3 The Vice President, shall in the absence or disability of the President, exercise such other powers and perform such other duties performed by the President or as shall be prescribed by the Directors.
- 5.4 The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors and other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep 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 of the Association. The Assistant Secretary will perform the duties of the Secretary when the Secretary is absent.
- 5.5 The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties incident to the office of the Treasurer of a corporation.
- 5.6 The compensation of all officers and 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 or preclude the contracting with a Director for the management of the Association.
- 5.7 Indemnification. Every Director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred or imposed upon him in connection with any proceedings to which he may be a party, or in which he may become involved by reason of his being or having been a Director or officer of the Association, or any settlement thereof, whether or not he is a Director or officer at the time such expenses are incurred, except in cases wherein the Director or officer is guilty of nonfeasance, misfeasance or malfeasance in the performance of his duties, or shall have breached his fiduciary duty to the members of the Association. Provided, however, that the Association shall not be liable for payment of a voluntary settlement unless it is first approved by the Board of Directors.
6. Records. Minutes of all meetings of members and of the Board of Directors shall be kept in a businesslike manner and these plus records of all receipts and expenditures and all other records shall be available for inspection by members and Board members at all reasonable times and within ten days of the receipt of a written request. The Association shall maintain each of the following items, when applicable, which constitute the official records of the Association.
- (a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the Association is obligated to maintain, repair, or replace.
 - (b) A copy of the Bylaws of the Association and of each amendment to the Bylaws.
 - (c) A copy of the Articles of Incorporation of the Association and of each amendment thereto.
 - (d) A copy of the Declaration of Covenants and a copy of each amendment thereto.
 - (e) A copy of the current rules of the Association.
 - (f) The minutes of all meetings of the Board of Directors and of the members, which minutes must be retained for at least 7 years.

- (g) A current roster of all members and their mailing addresses and parcel identifications.
 - (h) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least 7 years.
 - (i) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation or responsibility. Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of 1 year.
 - (j) The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
 - 1. Accurate, itemized, and detailed records of all receipts and expenditures.
 - 2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - 3. All tax returns, financial statements, and financial reports of the Association.
 - 4. Any other records that identify, measure, record, or communicate financial information.
7. Fiscal Management. 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. The budget shall include all anticipated revenues and expenses for operation, maintenance and administration of the Association including insurance, management fees, if any, and may include a reserve for deferred replacement maintenance. It shall contain any charges for recreational amenities and a reasonable allowance for contingencies, and provide funds for all unpaid operating expenses previously incurred. It shall include the estimated surplus or deficit as of the end of the current year. The Association must provide each member with a copy of the budget or a written notice that upon request a copy is available at no charge.
 - 7.2 Limitation on Assessments. Without approval of a majority of the members, no annual budget is effective or shall be passed or approved which requires assessments which are greater than 115 percent of the assessments required for the previous budget. Without approval of a majority of the members, except in the case of an emergency assessment, no special assessments in excess of \$500 per year are effective or can be approved or passed. An emergency assessment is defined as one created by hurricane, flood, fire, or similar act of God or similar extraordinary, unexpected, sudden and non-recurring expense.
 - 7.3 Assessments. The assessments for the shares of the members of the common expenses shall be made payable annually in advance or as designated by the Board of Directors, and shall become due on the first day of the assessment period. The amounts shall be no less than are required to provide funds in advance for payment of all the anticipated operating expenses, the reserves, unless waived, and for all of the unpaid operating expenses previously incurred.
 - 7.4 Emergency Assessments. Assessments for the expenses of emergencies which cannot be paid from the contingency account shall be made only by the Board of Directors and the time of payment shall be determined by the Board.
 - 7.5 Assessment Roll. The assessments for common expenses according to the budget shall be set forth upon a roll of the members which shall be available for inspection at all reasonable

times by members. A certificate made by a duly authorized representative of the Directors as to the status of a member's account may be relied upon for all purposes for any person for whom made.

- 7.6 Liability for Assessments. A member shall be liable for all assessments for a Lot which are due while he is the Owner of the Lot, and such Owner and his grantees after a voluntary conveyance shall be jointly and severally liable for all unpaid assessments due and payable up to the time of such voluntary conveyance. Provided, however, that a first mortgagee who acquires title by foreclosure or deed in lieu of foreclosure shall not be liable for unpaid assessments of prior owners unless they are evidenced by a lien recorded prior to the mortgage. Such liability may not be avoided by waiver of the use of enjoyment of any common areas, or by abandonment of the Lot for which the assessments are made.
- 7.7 Lien for Assessments. The unpaid portion of an assessment which is due together with interest thereon at the annual rate of 18 percent and reasonable attorneys' fees and costs for collection, shall be secured by a lien upon the Lot and all tangible personal property located on the Lot except that such lien shall be subordinate to prior liens and security interests of record.
- 7.8 Collection.
- (a) Interest: Application of Payments. Assessments paid on or before thirty (30) days after the date due shall not bear interest, but all sums not paid on or before thirty (30) days after the date due shall bear interest at the annual rate of 18 percent from the date due until paid. All payments upon account shall be first applied to interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account.
- 7.9 Suit. The Association, at its option, may enforce collection of delinquent assessment accounts by suit at law or by foreclosure of the lien securing the assessments, or by any other remedy available and in either event the Association shall be entitled to recover the payments which are delinquent at the time of collection, judgment or decree, together with interest thereon at the annual rate of 18 percent, and all costs incident to the collection and the proceedings, including reasonable attorneys' fees.
- 7.10 Accounts. All sums collected from assessments may be kept in a single fund, and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made.
- 7.11 Annual Statement. The Board of Directors shall furnish to all members and shall present annually (at the annual meeting) or within 60 days of the annual meeting an annual financial report consisting of either financial statements in accordance with generally accepted accounting principles or a financial report of actual receipts and expenditures, cash basis, which shows the receipts and expenditures by classification and the beginning and ending cash balances. The report shall include a balance sheet and profit and loss statement and a statement regarding any taxable income attributable to the members.
- 7.12 Acceleration of Installments Upon Default. If a member shall be in default in the payment of an installation upon his assessments, the Board of Directors or its agent may accelerate the remaining installments of the assessments for the year upon notice to the member; and the then unpaid balance of the assessments for the balance of the year shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice to the member, or not less than ten (10) days after the mailing of such notice to him by certified mail, whichever shall first occur.

- 7.13 Application of Payment. All payments made by a member shall be applied as provided in these Bylaws and in the Declaration, or as otherwise determined by the Board.
8. Parliamentary Rules. Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the Bylaws of the Association or with the laws of the State of Florida.
9. Amendments. Amendments to the Bylaws shall be made in the following manner:
- 9.1 Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
- 9.2 A Resolution adopting a proposed amendment must receive approval of a majority of the votes as provided in Section 2.8. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing.
- 9.3 Initiation. An amendment may be proposed by either a majority of the Board of Directors or by ten percent (10%) of the membership of the Association.
- 9.4 Effective Date. An amendment when adopted shall become effective only after being recorded according to law.
- 9.5 These Bylaws shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Covenants, Conditions and Restrictions.
- 9.6 A proposal 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 something similar to Substantial Rewording of Bylaw. See Bylaw # for Present Text.
10. Additional Members. The Board of Directors is authorized to create non-voting memberships to use the common properties and then charge assessments for the privilege of membership.
11. Conflicts. In cast of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; in case of any conflict between the Declaration and these Bylaws, the Declaration shall control; in case of a conflict between the Articles and the Declaration, the Declaration shall control.

BY: _____

William Zwicker, President

BY: _____

David Trimm, Secretary