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DECLARATION OF CONDOMINIUM  
OF  
BLACKBURN POINT MARINA VILLAGE, A CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM of BLACKBURN POINT MARINA VILLAGE, A Condominium, is made, entered into and submitted this \_\_\_ day of August, 2005, by BLACKBURN POINT MARINA VILLAGE, LLC, a Florida limited liability company, who for and on behalf of itself, its grantees, designees, successors, substitutes and assigns, makes and agrees to the following declarations and submittal statements, terms, provisions, conditions, easements, restrictions and covenants:

ARTICLE 1  
Definitions Used in Declaration

1.1 "Articles" means the Articles of Incorporation of Blackburn Point Marina Village Condominium Association, Inc., a non-profit Florida Corporation, a copy of which is attached hereto as Exhibit "B".

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

1.3 "Association" means Blackburn Point Marina Village Condominium Association, Inc., a non-profit Florida corporation, which is responsible for the operation, maintenance and management of the Condominium, and its successors and assigns.

1.4 "Association Property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members.

1.5 "Board of Administration" means the Board of Directors of the Association who are responsible for the administration and management of the Association.

1.6 "Board of Directors" or "Board" means the Board of Administration.

1.7 "Building" or "Buildings" means the structures on the Condominium Property in which the Units are located, and, where the context requires, the other buildings, if any, located in the Condominium.

1.8 "Bylaws" means the Bylaws of the Association existing from time to time, a copy of the current Bylaws being attached hereto as Exhibit "C".

1.9 "Common Elements" means and includes: (a) all portions of the Condominium Property not included in the Units; (b) easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and the Common Elements; (c) an easement of support in every portion of a Unit which contributes to the support of the Building; (d) the property and installations (other than the property and installations owned by the utility companies providing utility services) required for the furnishing of utilities and other services to more than one Unit or to the Common Elements; and (e) any other parts of the Condominium Property designated as Common Elements in this Declaration or on the Condominium Plat.

1.10 "Common Expenses" means all the expenses properly incurred by the Association for or relating to the Condominium and all expenses for which Unit Owners are liable to the Association and shall include, but are not limited to, the following:

(a) Costs and expenses of administration of the Condominium and the Association and costs and expenses of maintenance, operation, management, repair and/or replacement of Association Property, if any, and the Common Elements (including the Limited Common Elements, except as otherwise provided in this Declaration), and of all portions of the Units to be maintained by the Association, including but not limited to:

(i) Fire, other casualty, flood, liability, worker's compensation and other insurance as provided herein or as authorized by the Articles or by the Bylaws.

(ii) Administrative costs and expenses of the Association, including professional fees and expenses.

(iii) Costs and expenses of water supply, sewage disposal and treatment services to the Common Elements and electricity to service the Common Elements and the Association Property, cost and expenses of pest control service to the Common Elements, cost and expense of garbage disposal and trash removal service to the

Units and the Common Elements, costs and expenses associated with the provision of cable television services to the Condominium Units, and the costs and expenses of other utilities which are not metered or submetered to the individual Condominium Units.

(iv) Labor, materials, and supplies used for or in conjunction with the maintenance, operation, repair and replacement of Association Property and the Common Elements and Limited Common Elements except as may otherwise expressly be provided herein.

(v) Costs and expenses of repairing damages to the Condominium Property in excess of insurance coverage.

(b) Costs and expenses of management of the Condominium, including the following:

(i) Salary of a manager, if any, his or her assistants and agents, and related employer taxes and employee benefits, if any,

(ii) Management fees payable to an outside management company, if any, and

(iii) Other expenses incurred in the management of the Condominium Property.

(c) The cost and expense of acquiring, owning, managing, operating, maintaining, repairing and replacing all land, improvements and personal property owned or leased by the Association and such additional land, improvements and personal property as may be purchased by the Association through action of the Board of Directors.

(d) All outlays, costs and expense, if any, incurred by the Association in connection with the purchase, ownership, rental, operation, maintenance, repair, and/or replacement of any Unit acquired by the Association, including without limitation, all down payments and closing costs, debt service, utilities, taxes, insurance premiums, the share of common expenses allocable to such Unit, and other expenses related thereto.

(e) All other costs and expenses that may be duly incurred by the Association through its Board of Directors from time to time in operating, repairing, replacing, protecting, managing and conserving the Condominium Property and in carrying out its duties and responsibilities as provided by the Condominium Act, this Declaration or the Bylaws.

(f) All other costs and expenses declared Common Expenses by provisions of the Condominium Act, this Declaration or the Bylaws.

(g) Any valid charge against the Condominium Property as a whole.

Notwithstanding the foregoing, the cost and expense of maintaining, repairing, servicing and replacing all heating and air-conditioning equipment serving a particular Unit and located either within a Unit or in the mechanical room(s) or area(s) serving that Unit and the cost and expense of maintaining, repairing, servicing and replacing all lines and conduits running from any such heating and air-conditioning equipment to the Units being served by such equipment shall NOT be a Common Expense, but shall be the individual expense of the Owner(s) of the Unit being served by such equipment, lines and conduits.

1.11 **"Common Surplus"** means the amount of all receipts and income of the Association, including, but not limited to assessments, rents, profits and revenues on account of the Common Elements, in excess of the amount of the Common Expenses.

1.12 **"Condominium"** as herein used from time to time, shall mean the residential condominium being submitted to condominium ownership by this Declaration and known as Blackburn Point Marina Village, a Condominium.

1.13 **"Condominium Act"** means the Florida Condominium Act, as it exists on the date this Declaration is recorded in the Public Records of Sarasota County, Florida.

1.14 **"Condominium Parcel"** means a Unit, together with the undivided share in the Common Elements which is appurtenant to the Unit, and when the context permits, all other appurtenances to the Unit.

1.15 **"Condominium Plat"** means the survey, plot plan and plat annexed hereto as Exhibit "A" and incorporated herein by reference.

1.16 **"Condominium Property"** means the Lands and personal property that are subjected to condominium ownership under this Declaration, whether or not contiguous, and all improvements now or hereafter located thereon and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

1.17 **"Declaration"** or **"Declaration of Condominium"** means this Declaration, as it may be amended from time to time.

1.18 **"Developer"** means Blackburn Point Marina Village, LLC, a Florida limited liability company, its designees, successors, substitutes and assigns.

1.19 **"Exterior of the Unit"** means any portions of the Unit including, doors, balconies that are visible from the areas outside of the Unit.

1.20 **"Improvements"** means all structures and all portions thereof, and artificial changes to the natural environment (exclusive of landscaping), located on the Condominium Property, including, but not limited to, the Buildings.

1.21 **"Institutional Lender or Institutional First Mortgagee"** shall mean and be construed to include but not be limited to a bank, savings and loan association, savings bank, insurance company, real estate or mortgage investment trust, agency or quasi-agency of the U.S. Government, the Federal Housing Administration ("FHA"), the Veterans Administration ("VA"), the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the development/construction lender(s) for the Condominium, any other lender generally recognized as an institutional type lender, including affiliates thereof, the Developer and any Unit Owner holding a mortgage on the Condominium or any portion thereof or on a Unit or Units.

1.22 **"Land"** or **"Lands"** shall mean the real property owned by the Developer in fee simple (and easements, if any) being submitted to condominium ownership by this Declaration as Blackburn Point Marina Village, a Condominium, and which are more particularly described in Exhibit "D", which is incorporated herein by this reference.

1.23 **"Limited Common Elements"** shall mean those Common Elements which are reserved for the exclusive use of a certain Unit or Units to the exclusion of other Units as specified in this Declaration. Reference herein to Common Elements shall include also all Limited Common Elements unless the context would otherwise require or it is otherwise expressly provided.

1.24 **"Occupant(s)"** shall mean a person or persons in lawful possession of a Unit including, where the context permits or requires, the Owner or Owners thereof.

1.25 **"Operation"** or **"Operation of the Condominium"** means and includes the administration, repair, maintenance, replacement and management of the Condominium Property.

1.26 **"Percentage Interest"** of a Unit is the proportion or percentage of and manner of sharing common expenses and owning common surplus of the Association, and the percentage of the undivided interest in the Common Elements which is appurtenant to a Unit. The Percentage Interest of a Unit is the same as the Voting Interest attributable to such Unit (the Percentage Interest is stated as a fraction herein).

1.28 **"Project"** shall mean the condominium project known as Blackburn Point Marina Village, a Condominium, that will consist of a maximum of 19 condominium Units built by the Developer on the Lands.

1.29 **"Purchase Agreement"** means the Sale and Purchase Agreement for Condominium Residence between Developer and a Unit Owner.

1.30 **"Restrictions"** or **"Deed Restrictions"** means any covenants or restrictions set forth within the Public Records of Sarasota County, Florida constituting covenants attaching to and running with the title to the Lands, except as subsequently modified or released in the manner therein provided, held by and for the benefit of the Developer, its successors, grantees and assigns.

1.31 **"Special Assessment"** shall have the meaning ascribed to it in Section 9.10.

1.32 **"Surface Water Management System"** shall be a part of the Condominium Property and shall include, but are not limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, flood plane compensation areas, wetlands and associated buffer areas and wetland mitigation areas, if any, within the Condominium Property, as approved and permitted by Sarasota County and the Southwest Florida Water Management District.

1.33 **"Time-Share Estate"** means any interest in a Unit under which the exclusive right of use, possession or occupancy of the Unit circulates among the various owners of time-share estates in such Unit in accordance with a fixed time schedule on a periodically recurring basis for a period of time established by such schedule.

1.34 **"Time-Share Unit"** means a Unit in which Time-Share Estates are to be created.

1.35 **"Unit"** means that part of the Condominium Property which is to be subject to exclusive ownership. When used in a conveyance of a Unit, and elsewhere when the context permits, the word Unit shall include the appurtenances thereto which are elsewhere described herein.

1.36 **"Unit Owner"** or **"Owner of a Unit"** means the Owner of a Condominium Parcel. Where there is more than one entity or individual owning a Unit, the term Unit Owner refers to all such owners collectively.

1.37 **"Utility Services"** used in the Condominium Act and as construed with reference to this Condominium, and as used in the Declaration, Articles and Bylaws, utility services shall include, but not be limited to, electric power, gas, hot and cold water, heating, refrigeration, air-conditioning, cable TV and/or satellite TV services, and garbage, trash, refuse and sewage disposal.

1.38 "Voting Interests" mean the voting rights distributed to and held by the Association's members pursuant to the Florida Condominium Act and this Declaration. The Voting Interest of a Unit is the same as the Percentage Interest attributable to such Unit.

**ARTICLE 2**  
**Purpose of Declaration**

2.1 The purpose of this Declaration is to submit, and the Developer hereby submits, (I) the fee simple title to the Land identified and described within Exhibit "D" hereof, (ii) all easements, rights and appurtenances thereto belonging, (iii) all the improvements now and hereafter constructed or erected thereon and (iv) all other property, real, personal or mixed, intended for use in connection therewith (all subject to the easements, encumbrances, restrictions and other matters hereinafter described in this Declaration or in any of the Exhibits hereto) to the Condominium form of ownership and use in the manner provided herein and in the Florida Condominium Act, as it exists on the date hereof, excluding therefrom, however, all public or quasi-public utility lines, installations and equipment and related easements owned by such utility companies.

**ARTICLE 3**  
**Identification of Condominium**

3.1 **Name and Location.** The name by which this Condominium is to be identified and known is Blackburn Point Marina Village, a Condominium, and it has a street address of 440 Blackburn Point Road, Osprey Florida.

3.2 **The Lands.** The legal description of the Lands which are hereby submitted to the Condominium form of ownership and use at this time is set forth in Exhibit "D" annexed hereto. The Developer and the Project's surveyor may make non-material changes and correction in the legal description of the Land as herein reserved.

**ARTICLE 4**  
**General Description Condominium**

4.1 **Development Plan.** The Condominium is a condominium project that is being developed and submitted to condominium ownership pursuant to the Condominium Act as it exists on the date hereof as further described hereinbelow.

4.2 **Project Description.** The Condominium will be developed and will consist of a total of 19 Units, as more particularly described within Exhibit "A" annexed hereto and incorporated herein by reference. The Condominium contains the landscaped areas, the recreational and other common facilities and amenities as hereinafter more particularly described.

The Unit numbers and general size of the Units are set forth within Exhibit "A" annexed hereto.

Each Condominium Unit Owner will own a Percentage Interest of the Common Elements and of the Common Surplus and will share and be responsible and liable for the Percentage Interest of the Common Expenses of the Condominium. The Percentage Interest for each Unit is set forth in Table I of this Declaration. Such Percentage Interests, however, are subject to being changed as hereinafter provided, including without limitation, if the Developer shall exercise its right as set forth herein to change the boundary lines between two or more abutting Units it owns and to reallocate such Percentage Interests in the Common Elements, Common Surplus and Common Expenses appurtenant to such abutting Units pursuant to such paragraph.

Proviso: The Developer hereby reserves the right to combine Units or parts thereof, provided that and only to the extent that such a combination is authorized under Section 718.110, Florida Statutes. As a consequence, the percentage interests of the Units so affected, and thus their liability for assessments and voting interest, will change. Each Unit Owner acknowledges and agrees that, provided the effect of such combination does not change the percentage interest of the Unit Owner's Unit, such changes are neither material nor adverse to Buyer. Each Unit Owner, therefore, on behalf of the Unit Owner's heirs, personal representatives, successors, grantees, mortgagees and assigns, unconditionally and unequivocally appoint the Developer their agent and attorney-in-fact to execute, acknowledge and record amendments to the Declaration of Condominium to reflect such combinations.

The Common Elements in this Condominium include the following, all of which will be completed prior to the sale of the first Unit in the Condominium:

**A. Outdoor Facilities.**

An outdoor swimming pool, and deck area. The swimming pool has a surface area of approximately 900 square feet, accommodates approximately 20 persons, ranges in depth from 3 ft. to 8 ft., is lighted, and is irregular in shape. The swimming pool is heated.

The pool equipment will be located at ground level. No diving boards are provided or permitted.

A deck area, and less the area covered by the pool and consisting of approximately 1,300 square feet surrounds the swimming pool and the deck area is located at ground level. There is a cabana, barbecue and grill area, and restroom facilities located adjacent to the pool. The restroom facilities include a men's room and a women's room and can accommodate approximately one person(s) each.

There are 19 spaces located adjacent to and surrounding the pool area, the use of which will be on a first come, first served basis.

**B. Building Facilities.**

The ground level contains the first floor of each Unit, including entrances, and a one car garage. Access to a Unit is through the garage or a separate outside doorway that opens to the motor court. Unit 13 includes a 2 car garage.

The ground level also includes the swimming pool, clubhouse, and guest parking.

The internal travelway is a two-way facility with controlled access, through a "drop arm" entrance gate, accessed with the appropriate authorization code or card. Also located at the ground level are utility connections, power transformers, a pool equipment area, mailboxes, landscaped areas that are both public and private, controlled access points to the Condominium Property, and electrical equipment area.

Each Unit has a ground level and one additional floor. No Unit is located above another Unit.

**C. Developer Expenditures for Personal Property.** The minimum total dollar amount of expenditures that will be made by the Developer to purchase and acquire personal property for the facilities previously described is \$2,500.

**D. Miscellaneous.** All locations, areas, capacities, numbers, amounts and sizes as set forth above are approximations. The Association may adopt rules and regulations restricting, limiting and governing the use and operation of the recreational and other commonly used facilities by the Unit Owners and their tenants and guests pursuant to Articles 5 and 7 hereinbelow. In addition, certain common facilities may be temporarily reserved by a particular Unit Owner or tenant to the exclusion of the other Unit Owners and tenants.

4.3 **Non-Interference With Construction, Completion and Sale of the Condominium.** The Unit Owners, jointly and severally acknowledge and agree, in their own behalf and on behalf of their mortgagees, heirs, grantees, successors, personal representatives and lienors, that: (i) the marketing, completion and sale of the Project may occur over an extended period of time, (ii) that their quiet enjoyment and use of their Units may be interfered with by such marketing, completion and sale, (iii) they waive all claims, liabilities and damages against the Developer, arising from such interference and (iv) they shall not hereafter, by action or inaction, object to, prevent, hinder, delay or otherwise impede or attempt to prevent, hinder, delay or otherwise impede the marketing, completion and sale of the Project.

4.4 **Developers Use of Project's Common Elements and Facilities Until Project is Completed and Sold.** All the present and future Unit Owners in this Condominium jointly and severally acknowledge and agree in their own behalf and on behalf of their mortgagees, heirs, grantees, successors, personal representatives and lienors that until the Project is completed and all the Condominium Units in the Project are sold, and as long as the Developer is offering units for sale in the ordinary course of business, the Developer shall have the right to make such use of the Common Elements to facilitate such completion and sale, including, without limiting the generality of the foregoing, the right to use such Common Elements for social events, promotional events and sales events for sales prospects and others and the right to use, without payment of rent or fees, all common and other areas of the Condominium except Units not owned by the Developer, for such purposes, including sales and administrative offices, models and signs and display areas.

4.5 **Additional Rights of Developer During Development and Sales Period.** Notwithstanding anything herein contained or implied to the contrary, until the Project is completed and all Condominium Units in the Project are sold, and as long as the Developer is offering units for sale in the ordinary course of business, the Developer and its agents and representatives shall have the right to use the unsold Units and the Common Elements and facilities of the Project to facilitate such completion and sale, including, without limiting the generality of the foregoing, the maintenance of a business, sales and/or construction office, the display of signs and other advertising and promotional materials and devices, the maintenance of a sales model or models and the showing of the Project and Units therein to prospective purchasers or lessees.

**ARTICLE 5**

**Specific Description of Condominium**

5.1 **Survey, Graphic Description of Improvements and Plot Plan.** A survey of the Lands, the improvements in which the Units included are located and other improvements and a plot plan locating the improvements thereon and identifying the Common Elements, Limited Common Elements, and each Condominium Unit and providing approximate representations of their locations and dimensions is attached as Exhibit "A". All dimensions shown on the condominium plat are approximate only and are subject to variances during the course of construction and shall be final only as certified to by the surveyor within the completed certificate of surveyor as required by the Condominium Act.

5.2 **Easements.** Each of the following easements are hereby granted, reserved and otherwise created in favor of the Developer, its grantees, successors and assigns, the Association and the Unit Owners and other lawful occupants of Units in this Condominium and their guests and invitees (and in favor of public or private utility companies serving the Condominium, but as to such utility companies only where expressly specified) and are covenants running with the Land and with title to the Condominium Property, and notwithstanding any of the other provisions of this Declaration, may not be amended or revoked and shall survive the termination of the Condominium and the exclusion of any of the Lands of the Condominium from the Condominium to the extent reasonably required to enable the companies to provide their respective services:

(a) **Utilities and Drainage.** Drainage easements and easements for all water, sewer, electrical, telephone, cable television and other utility lines and mains and drainage ditches, lines and structures, previously, now or hereafter providing service to the Condominium and/or the Units, the installation, repair, maintenance and replacement thereof and as may subsequently be required for utility services in order to adequately serve the Condominium and/or all or any of the Units, provided, however, easements through a Unit shall only be according to the plans and specifications for the Building as the Building is actually constructed unless approved in writing by the Unit Owner. The foregoing utility easements are and shall also be in favor of all utility companies servicing the Condominium, including Sarasota County, Florida to the extent reasonably required to enable the companies to provide their respective services.

(b) **Pedestrian and Vehicular Traffic.** For pedestrian traffic over, through and across all sidewalks, decks, other paths, walks and lanes, as the same may from time to time exist upon the Common Elements, and for vehicular and bicycle traffic over, through and across the private streets, roads and drives, and such other portions of the Common Elements as may from time to time be paved and/or intended for such purposes, but the same shall not give or create in any person the right to drive or park upon any portions of the Condominium Property except those intended to be used for such purposes and reasonably suited therefor. This easement shall also be in favor of police, fire, emergency and service personnel while providing services to the Condominium or the Unit Owners.

(c) **Encroachments.** If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements; or (c) any encroachments shall hereafter occur as a result of (i) construction of the Improvements, (ii) settling or shifting of the Improvements, (iii) any alteration or repair to the Common Elements made by or with the consent of the Association, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand and exist.

(d) **Support and Use for Party Walls and Common Utilities.** Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements. Where a common or equal party wall services two (2) or more Units, each Unit so served shall have a non-exclusive easement of use and support of such party wall. Where one (1) or more Units have or desire to have constructed Utility Services provided or to be provided through utility conduits serving or located in other Units or located in the Common Elements, each Unit shall have an easement, and shall be subject to an easement for the construction of, the existence of, and the repair or replacement of, such utility conduits(s).

(e) **Construction; Maintenance.** The Developer (including its designees, contractors, successors and assigns) shall have the right, in its and their sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, provided such activity does not prevent or unreasonably interfere, in the opinion of the Developer, with the use or enjoyment by the Unit Owners of the Condominium Property.

(f) **Sales and Promotional Activity.** For as long as there are any unsold Units in the Project, as long as the Developer is offering units for sale in the ordinary course of business, the Developer, its designees, successors and assigns, shall have the right to use any such Units and all parts of the Common Elements for model apartments and sales/administrative offices, to show model apartments and any unsold Units and the Common Elements to prospective purchasers and tenants, to erect on the Condominium Property and other promotional display materials, to advertise Units for sale or lease and for any other similar purposes the Developer deems appropriate in its opinion.

(g) **Maintenance and Repairs.** An easement and right of the Association or its designees to enter over, through and upon all the Condominium Property for the purpose of cleaning, maintaining, repairing and replacing any portions of the Condominium that are the responsibility of the Association; provided, however, that entry into a Unit, except in the cases of an emergency or to clean exterior surfaces, shall be permitted only with the consent of the Unit Owner or pursuant to legal process, except as otherwise reasonably required for the use of the easements referred to in subsections (a) or (d) of this Section 5.2.

(h) **Other Easements.** Other easements, if any, over, upon, through and across the Lands, as more particularly set forth on the Condominium Plat.

(i) **Reservation of Additional Rights in Developer.** Until such time as Developer has completed the Condominium together with the construction of all Improvements, and as long as the Developer is offering units for sale in the ordinary course of business, within the Condominium Property, easements, including but not necessarily limited to, ingress and egress, utilities and drainage easements are hereby reserved and shall exist through, in, over and upon the Condominium Property as may be required, convenient or desirable by Developer for the completion of the contemplated development of the Condominium and the Improvements, and the sale of the Units.

5.3 **Association's and Developer's Right to Amend and Create Additional Easements.** The Association and the Developer, until the Developer has sold all the Units in the Condominium, and as long as the Developer is offering units for sale in the ordinary course of business shall at all times have the right, power and authority to declare and create, convey and dedicate, modify and amend, from time to time, without joinder and consent of any Unit Owner, mortgagee, or lienor, reasonable easements over, upon, in and through the Condominium Property for drainage, utility or other purposes and for ingress and egress provided, however, that at the time of the creation of such easements and at the time of the modification or Amendment of any then existing easements, such easements and such modifications and Amendments shall not unreasonably interfere with the peaceful and lawful use and enjoyment of the Condominium Property and the Units by the Unit Owners.

**5.4 Alteration of Boundaries Between and Size of Abutting Units and of Interior Design and Layout of Units and Combining Abutting Units by Developer.** The Developer hereby reserves the absolute right, in its sole discretion to modify, move, alter, amend or change the boundaries between abutting Units owned by the Developer in such a manner as to, among other things, include additional rooms or spaces in one Unit and exclude them from the other Unit, to increase the size of a Unit and to decrease the size of another, and/or to combine two or more abutting Units into one Unit, provided in each case the Developer shall have obtained the consent of at least a majority of the total Voting Interests, and if any such Units are encumbered, the consent of the holders of any mortgages thereon.

The Developer also reserves the absolute right, in its sole discretion, without the consent or approval of any Unit Owner(s), mortgagee(s) or other lienor(s), contract vendee(s), the Association or any other person(s), to change, alter, modify or amend the interior design arrangement, number of rooms and layout of all Units, so long as the Developer owns and has not encumbered the Units so altered, or, if encumbered, has obtained the consent of such mortgagee to such change, alteration, modification or Amendment.

Proviso: The Developer has reserved the right in this Declaration of Condominium to combine units or parts thereof. As a consequence, the percentage interests of the Units so affected, and thus their liability for assessments and voting interest, will change. Each Unit Owner acknowledges and agrees that, provided the effect of such combination does not change the percentage interest of the Unit Owner's Unit, such changes are neither material nor adverse to Buyer. Each Unit Owner, therefore, on behalf of the Unit Owner's heirs, personal representatives, successors, grantees, mortgagees and assigns, unconditionally and unequivocally appoint the Developer their agent and attorney-in-fact to execute, acknowledge and record amendments to the Declaration of Condominium to reflect such combinations.

**5.5 Amendment of Declaration by Developer to Reflect Alteration of Boundaries Between or Size of or Interior Design and Layout of Units or Combining of Units.** The Developer shall reflect any change, modification, alteration or Amendment as described in Section 5.4 (a) above by filing as required under the Condominium Act and recording an Amendment to the Condominium Plat prepared by a licensed Florida surveyor and/or an Amendment to the Condominium Declaration.

In the event such an Amendment changes the boundary lines between two (2) or more abutting Units, such Amendment to the Declaration shall also redistribute between the two (2) or more Units involved the Voting Interests, Percentage Interest in the Common Elements and share of the Common Surplus and Common Expenses previously assigned to the Units involved, in such a manner that the totals of these items as reassigned to the modified Units as a whole shall equal the same totals of these items previously assigned to the Units as a whole before such modifications.

In the event the Developer by such Amendment combines two or more Units to create one larger Unit, the Voting Interest, Percentage Interest in the Common Elements and the Common Surplus and the share of the Common Expenses previously assigned and appurtenant to the Units being combined shall be automatically reassigned to the larger Unit.

Such Amendment to the Declaration shall be executed with the formality required by law for the execution of a deed, shall be approved by a majority of the total Voting Interests, and need be signed only by the Association and the Developer and the mortgagee(s) holding a mortgage on the Unit(s) affected and shall include the recording data of the Declaration and be filed and recorded in the Public Records of Sarasota County, Florida, and shall be effective from and after the date it is filed and recorded.

Subject to the provisions of the Florida Condominium Act, such Amendment to the Condominium Plat need be executed only by a licensed Florida Surveyor, and shall be filed in the Condominium Plat Book of Sarasota County, Florida.

Such Amendment to the Declaration shall have as an Exhibit thereto an Amendment to the Condominium Plat depicting the new boundary lines between Units and the location of the Unit's perimeter boundaries, both vertical and horizontal, the new boundary line of the new Unit resulting from the combination of two Units or the new layout, and arrangement of such Unit(s), as the case may be, new layout, design and arrangement of such abutting Units, the new boundary line of the new Unit resulting from the combination of two Units or the new interior layout, design and arrangement of such Unit(s), as the case may be.

**5.6 Amendment to Declaration to Reflect Substantial Completion.** All persons having any interest or rights in or acting with reference to this Condominium, whether as contract purchasers, grantees, mortgagees, lienors or otherwise, acknowledge and agree that if, at the time of the execution and recording of this Declaration and the Exhibits attached hereto and the Condominium Plat, the Condominium is not substantially completed, they irrevocably agree for themselves and their heirs, grantees, personal representatives, successors and assigns that the Developer by itself has the right to amend this Declaration and the Exhibits as may be necessary or desirable from time to time to identify, locate dimension, and submit the Improvements, Units and Common Elements as and when the construction of each portion thereof is substantially completed. At such time as the construction of the Condominium is substantially completed, the Declaration shall be amended to reflect such substantial completion and to include the certificate(s) required by the Florida Condominium Act. Such an Amendment when signed and acknowledged by the Developer shall constitute an Amendment of this Declaration, without approval of the Association, other Unit Owners or contract vendees, lienors or mortgagees of Units or of the Condominium or any other person, whether or not elsewhere required for an Amendment. In the event of any variation between the actual situs of a Unit, the Building or other improvement on the Condominium Property and that shown on the Condominium Plat, the actual situs of the Unit, Building or other improvement shall prevail.

**5.7 Improvements.** The Condominium, subject to the rights reserved to the Developer within this Declaration hereof, includes the Building, the Units and other improvements, facilities and amenities that will be located substantially as shown on the Condominium Plat, Exhibit "A".

5.8 **Common Elements.** The Common Elements of the Condominium include the Land and all other parts of the Condominium that are not part of or included within the Units. The Common Elements include all portions of the Building (except the Units), all parking areas, access areas, all drives, pedestrian paths or walkways, the outdoor swimming pool, and deck area, cabana, grill and barbecue area, the landscaped area and walls and gates, if any, the Project's drainage facilities and such other improvements, facilities and areas as shown on the Condominium Plat.

Some of the Common Elements, however, are designated Limited Common Elements and are reserved for the exclusive use of a certain Unit or Units as described in Section 5.9.

The Unit Owners in the aggregate shall be entitled to equal and full use and enjoyment of all the Common Elements:

- (a) Except the Limited Common Elements;
- (b) Except as provided in Sections 4.3, 4.4, 4.5, 5.3, 5.4 5.5 and 5.10; and
- (c) Except as otherwise expressly provided herein, and except as they may be restricted by the reasonable and uniform rules and regulations duly adopted by the Association's Board of Directors, which usage and enjoyment shall always be in recognition of the mutual rights and responsibilities of all of the Unit Owners.

**PROVISO.** Notwithstanding anything herein contained or implied to the contrary, the Developer hereby specifically reserves the exclusive right in its sole discretion, without the consent or approval of any Unit Owners, mortgagees or other lienors, contract vendees, the Association or any other person, to modify, move, amend or change the location of the proposed roads providing ingress and egress to, through and/or from the Condominium, the proposed pedestrian paths providing ingress and egress to, through and from the Condominium and the location and/or dimensions of the proposed outside parking spaces when deemed necessary or desirable by Developer to save existing trees and shrubbery. Additionally, respecting areas required for minimum off-street parking by the County of Sarasota, to the extent permissible under applicable Ordinances of the County, such areas may be placed in reserve in landscape and/or grass areas for the purpose of increasing green area and enhancing the aesthetics of the Condominium. Developer reserves the absolute right and authority in its sole discretion, without the consent or approval of any Unit Owners, mortgagees or other lienors, contract vendees, the Association or any other person, to determine such parking spaces to be placed in reserve and if required hereafter to pave, mark, stripe or make any other type of improvement to the reserved area to do so forthwith. An easement for the use of such spaces and for access thereto and therefrom shall exist and run in favor of Developer and each Condominium Unit Owner, and those claiming by, through and under them. The provisions of this clause shall constitute a covenant running with the title to the Land and shall be binding upon all successors in title and may not be canceled or terminated except upon the prior written consent of Developer, its successors and/or assigns.

5.9 **Limited Common Elements.** The Limited Common Elements of the Condominium are the entry stairs located adjacent to the Units.

5.10 **Right of Association to Permit Exclusive Occupancy and Use of Certain Common Elements.** The Association may grant the exclusive use and occupancy of the mechanical rooms, equipment rooms, management office, and general purpose space to persons using and occupying such rooms, offices and areas for the purpose(s) for which they were and are intended.

## ARTICLE 6 The Units

6.1 **The Units.** The Units of the Condominium are more particularly described and the rights and obligations of their owners and occupants are established by this Declaration and all Exhibits annexed hereto.

6.2 **Types of Units.** The Developer, subject to the rights it has reserved in Section 5.4 and 5.5 hereof, has initially planned and established two (2) types of Units. A Schedule of the Unit type describing the Unit type, the Unit numbers, the number of bedrooms and bathrooms, the approximate square footage, the number of Units in the Condominium and the Voting and Percentage Interest of the Unit type is set forth in Table I below.

6.3 **Definitions of Unit Boundaries.** Each unit shall include that part of the building containing the unit that lies within the boundaries of the unit, which boundaries shall be determined in the following manner:

(a) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) **Upper Boundaries.** The upper boundary of all units shall be in the horizontal, angular or other planes of the undecorated finished ceiling of each story of the building containing and defining the multi-story unit extended to their intersections with the perimetrical boundaries. The structural slabs or floors of the building containing the multi-story unit between the uppermost and lowest levels of the multi-story unit are, however, not part of the unit, but are part of the common elements.

(ii) **Lower Boundaries.** The lower boundary of all units shall be the horizontal plane of the undecorated finished surfaces of the floors of each story of the building containing and defining the multi-story unit extended to their intersections with the perimetrical boundaries. The structural slabs or floors of the building containing the unit between the uppermost and lowest level of the multi-story unit are, however, not part of the unit, but are part of the common elements.



(iii) **Interior Division.** No part of the non-structural interior walls or partitions shall be considered a boundary of the unit, but shall be part of the unit.

(b) **Perimetrical Boundaries.** The perimetrical boundaries of a unit shall be the vertical planes of the undecorated finished interior of the exterior walls bounding the unit extended to their intersections with each other and with the upper and lower boundaries.

(c) **Apertures.** Where there are apertures in any boundary, including, but not limited to, windows, doors and skylights, such boundaries shall be extended to include the interior unfinished surfaces of such apertures, including all frameworks thereof. Exterior surfaces made of glass or other transparent materials, including screens and all framing and casings therefor, shall be included in the boundaries of the Unit.

(d) **Balconies/Terraces.** Balconies and terraces adjoining and accessible only from a Unit shall be a part of that Unit and shall not be Common Elements.

(e) **Exceptions.** In cases not specifically covered above, and/or in any case of conflict or ambiguity, the Survey of the Units set forth as part of the Condominium Plat shall control in determining the boundaries of a Unit, except the provisions of Section (c) above shall control unless otherwise specifically reflected to the contrary on such Survey.

**TABLE I**

<b>Unit Number</b>	<b>Total Number of Units</b>	<b>% Interest per Unit</b>	<b>Bedrooms/ Bathroom/ ½ Bathroom</b>	<b>Net Area of Unit</b> <small>Total Area under A/C/ Total Area (Both A/C and Non-A/C)</small>	<b>Voting Interest</b>
1, 4, 5, 7, 10, 12, 15, 16, and 19	9	1/19th	3/2/1	1847/2623	1 Vote per Unit
2, 3, 6, 8, 9, 11, 14, 17 and 18	9	1/19th	3/2/1	1942/2718	1 Vote per Unit
13	1	1/19th	3/2/1	1942/2908	1 Vote per Unit
<b>Totals</b>	<b>19</b>	<b>100%</b>	<b>---</b>	<b>---</b>	<b>1 Vote per Unit</b>

"Net area" as used in Table I means the floor area within the parametrical boundaries of the Unit. The first number includes the Air conditioned space only. The second number includes the air conditioned space, the garage, the lanai, the terrace, the entry, and the read deck. Developer reserves the right to reduce the number of Units by combining Units or parts of Units. Developer reserves the right to enlarge the number of Units by splitting Units. In any such case, the voting percentages and assessments will change based upon the Unit total area as a percentage of all Units air total areas. In no event shall the total number of Units in the Condominium be greater than 19 units.

All dimensions and square footage shown in Table I above and on the Condominium Plat are approximate only and are subject to variances during the course of permitting and construction. Note that in the event Buyer selects alternate floor plans, square footages may change (e.g., addition of appraisal floor plan modifying the kitchen area will add 150 square feet to the interior air condition space).

6.3 **Unit Identification and Location.** The Units are designated and identified by a Unit number that describes the location of the Unit as depicted on the Plat.

6.5 **Appurtenances to Units.** The owner of each Unit shall own a share in and have a certain interest in the Condominium Property, which share and interest are appurtenant to the Unit, including, but not limited to, the following items that are appurtenant to the Units as indicated:

(a) **Common Elements and Common Surplus.** An undivided Percentage Interest in the Land and other Common Elements of the Condominium and in the Common Surplus, which are appurtenant to each Unit are set forth within Section 6.2 hereinabove, subject, however, to possible adjustment under the circumstances described in Sections 5.4 and 5.5 hereof.

(b) **Association Membership.** The membership of each Unit Owner in the Association, with the full voting rights (Voting Interest) appertaining thereto, and the Percentage Interest of each Unit Owner in the funds and assets held by the Association.

(c) **Easement for Air Space.** An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time. An easement in air space which is vacated shall be terminated automatically.

6.6 **Liability for Common Expenses.** Each Unit shall be liable for its Percentage (%) Interest of the Common Expenses and Assessments of this Condominium. Each Unit's Percentage Interest is set forth within Section 6.2 hereinabove, subject, however, to adjustment under the circumstances described in Sections 5.4 and 5.5 hereof and except as otherwise provided in Article 9.

6.7 **Ownership of Common Elements and Common Surplus.** Each Unit in this Condominium owns its Percentage Interest in the Common Elements and Common Surplus of this Condominium. The Percentage (%) Interest which is appurtenant to each Unit is set forth in Section 6.2 hereinabove, subject, however, to possible adjustment under the circumstances described in Sections 5.4 and 5.5 hereof.

## ARTICLE 7

### Use and Occupancy Restrictions

7.1 **Use and Occupancy Restrictions.** In order to provide for the congenial and harmonious use and occupancy of the Condominium Property and to protect the value of the Units, the use and occupancy of the Condominium Property and each Unit shall be in accordance with the provisions hereinafter set forth.

7.2 **Occupancy and Use of Units.** Each of the Units shall be used and occupied as a residence only, except as may be otherwise herein expressly provided.

7.3 **Corporation, Partnerships and Other Entities.** The sale, transfer or lease of a Unit to a corporation, partnership, trust or other entity shall be conditioned upon (a) the prior designation by the purchaser, transferee or tenant as the case may be, of the persons that will use the Unit as a residence, and (b) the prior approval by the Board of Administration of the designated persons. Except for use by employees of the corporation, partnership, trust or other business entity, no transient type use of a Unit shall be permitted. The Association, however, may reasonably regulate the use of Units by such employees to prevent nuisances or annoyances to other Unit Owners.

7.4 **Subdivision of Units Prohibited.** Except as expressly reserved to the Developer, no Unit may be divided or subdivided for purposes of sale, transfer or lease.

7.5 **Prohibitions.** No owner, tenant or other occupant of a Unit shall:

(a) Unless first obtaining the written approval of the Board, which approval may be granted or withheld in the sole discretion of the Board, (i) paint or otherwise change the appearance of the exterior of the Unit or the Building or of any exterior wall, door, window, screen, patio, balcony, terrace or any other exterior surface; (ii) place any sunscreen, blinds or awning on any balcony, terrace or on the exterior of any surface or opening without prior written approval of the Board; (iii) place any draperies, blinds or curtains at or over the windows or doors of any Unit without a solid, light color exterior liner acceptable to the Board; (iv) tint, color or otherwise treat apply anything to any window or door which will adversely or materially change or affect the uniform exterior appearance of the Building in the opinion of the Board; (v) plant, place or maintain any plant or Landscaping outside of a Unit except upon prior written approval of the Board; (vi) erect or install any exterior signs; (vii) place any signs or symbols in or on windows or doors; or (viii) erect, place or attach any structures or fixtures within or to the Common Elements.

(b) Make any structural alterations to any Unit or to the Common Elements provided, however, this shall not prevent the erection, removal or modification of non-support carrying interior partitions wholly within the Unit; nor fasten any fixtures, or objects to walls, floors or ceilings that would damage any structural portions of the Common Elements or utilities or electrical lines or heating or air conditioning ducts or mains.

(c) Fail to conform to and abide by the Declaration and Bylaws and the uniform Rules and Regulations in regard to the use of the Units, the Association Property and the Common Elements which may be adopted from time to time by the Board, or fail to allow the Association to enter the Unit at any reasonable time, when necessary for maintenance, repair or replacement of common elements or emergency repairs necessary to prevent damage to common elements or another unit(s).

(d) Erect, construct or maintain any wires, acrials, antennas, satellite dishes, receiving dishes, garbage or refuse receptacles or other equipment or structures on the exterior of the Building or the Unit on or in any of the Common Elements, except with the prior written consent of the Board.

(e) Obstruct ingress or egress to the other Units or the Common Elements.

(f) Hang or display any laundry, garments or other unsightly items or objects which are visible outside of the Unit.

(g) Allow anything to remain in the Common Elements or Association Property which would be unsightly or hazardous.

(h) Allow any rubbish, refuse, garbage or trash to accumulate in places other than the receptacles provided therefor, and each Unit, the Association Property and the Common Elements shall at all times be kept in a clean, safe and sanitary condition.

(i) Make use of the Common Elements and/or Association Property in such a manner as to abridge the equal rights of the other Unit Owners to their use and enjoyment, except as otherwise expressly provided herein and except for the Limited Common Elements as herein provided.

(j) Park, maintain or keep commercial trucks (except for non-commercial vans or trucks), motorcycles, campers, trailers, mobile homes, motor homes, recreational vehicles, and similar vehicles in any parking area or elsewhere in the Condominium, except service vehicles during the time their occupants are actually serving a Unit or the Common Elements; provided however, that this shall not prevent the maintenance and parking of such vehicles as may be essential and necessary to transport physically challenged persons such as their wheelchairs or other similar devices.

(k) Use any balcony, terrace, landing or stairway or the Common Elements for outdoor cooking of any nature, except those areas, if any, designated by the Board for such purposes and designated by this Declaration for such use, including, but not limited to the exterior terrace off of each Unit.

(l) Permit the installation of any objects or flooring in a Unit the weight of which (together with any padding or insulating materials) would exceed the approved load limit for the area involved.

(m) Install or permit the installation of storm, hurricane or other shutters, awnings, shades or coverings over exterior windows, glass doors or other exterior surfaces except for hurricane shutters whose specifications have been approved by the Board of Directors.

(n) Install or permit the installation of any additional locks on the interior or exterior of the exterior door(s) of the Unit without the prior written approval of the Board of Directors.

All Unit Owners do by their acceptance of a conveyance of such Unit waive any right to maintain or institute a partition action or subject a Unit to a partition action in any court.

**7.6 Pets Restricted.** No Unit Owner may permit, keep or maintain any pets or animals in a Unit or in the Common Elements except for dogs, domestic cats, and/or fish where such pets are not a nuisance, without the prior written consent of the Board of Directors. Tenants, guests or invitees of a Unit Owner are not permitted to bring pets or animals of any kind into the Condominium. All dogs must be on a leash and accompanied by the owner when using the Common Elements. No pets shall be allowed to roam free on the Common Elements nor shall any pet be permitted on the motor court. If, in the sole opinion of the Board, a permitted pet has become a nuisance, the Board shall have the right to require the pet to be immediately removed permanently from the Condominium Property. Each Unit Owner shall be responsible for any pet waste and/or damage resulting from the presence of such Unit Owner's pet upon the Condominium Property. No unit owner may permit, keep, or maintain more than two (2) dogs and/or cats, combined, in a Unit or on the Common Areas at any time. No pet shall exceed forty (40) lbs. in weight. The combined weight of both pets shall not exceed forty (40) lbs.

**7.7 Children of Unit Owners Not Prohibited as Residents.** There are no restrictions prohibiting children of Unit Owners from residing in this Condominium Property under adult presence and supervision.

**7.8 Common Elements.** The Common Elements shall be used only for the purpose for which they are intended in the furnishing of services and facilities for the enjoyment of the Units and their occupants and as otherwise herein provided.

**7.9 Nuisances.** No nuisances as defined by the Association shall be allowed upon the Condominium Property. Nor shall any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by its residents be allowed, except for the sales, administrative, marketing and promotional activities of the Developer as reserved hereunder.

**7.10 Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the Condominium Property nor any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property as between the Association and the Unit Owners shall be the same as the responsibility for maintenance and repair as set forth in Article 8.

**7.11 Leasing.** Leasing or renting of a Unit by a Unit Owner is not prohibited, but is restricted. No portion of Unit (other than an entire Unit) may be rented or leased. No Unit may be rented or leased for a term of less than thirty (30) days, nor more than three times a year. All leases shall be on forms approved by the Association and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, applicable rules and regulations, or other applicable provisions of any agreement, document or instrument governing or affecting the Condominium. The leasing and renting of Units shall also be subject to the prior written approval of the Board. Any Unit Owner desiring to rent or lease a Unit shall submit such request in writing to the Association setting forth the name of the lessee, and supply such information as may be required by the Association. Approval of tenants shall not be unreasonably withheld. The Association may charge a fee in connection with each request for leasing approval, but no such fee shall be in excess of the expenditures reasonably required for such lease approval, nor shall such fee be in excess of the maximum allowed by law. Provided, however, that no lease granted shall in any way be violate or vitiate or lessen any part of this Declaration or any restrictions upon the use or occupancy of the Unit or upon the use of the land as herein established or, as may be hereafter established, in the Public Records of Sarasota County, Florida.

During the period of time that a Unit is leased to others, the Unit Owner and the Unit Owner's family or guests shall not have the right to use or occupy the Association Property or Common Elements of the Condominium, except as a guest in the presence of the tenant or occupant of the Unit, unless such rights are waived in writing by the tenant. The Unit Owner shall be jointly and severally liable with the tenant to the Association to repair any damage to the Condominium resulting from any acts or omissions of tenant or tenants' guests (as determined in the sole judgment of the Association) and to pay for injury or damage to property caused by the negligence of the tenant or tenant's guests. All leases shall be, and are hereby made, subordinate to any lien filed by the Association, whether prior to or subsequent to such lease.

There shall be no use of any Unit which would constitute a transient use or a tourism use under any applicable code, ordinance, rule, regulation, statute, or law.

7.12 **Other Covenants, Restrictions and Agreements.** The title to each Unit has been or will be conveyed by the Developer subject to this Declaration and to all easements, restrictions, covenants and agreements of record and to miscellaneous restrictions imposed by all State and local governmental authorities on the Land (the "Governmental Restrictions") all as more fully disclosed by the Developer herein or in the Prospectus and other condominium documents for this Condominium.

7.13 **Association Membership.** In order to establish, protect and preserve the quality of this Condominium, each Unit Owner in the Condominium shall be required to become a member of Blackburn Point Marina Village, a Condominium Association, and to maintain such membership in good standing.

7.14 **Rules and Regulations.** Uniform Rules and Regulations concerning the use of the Units the Association Property and the Condominium Property, including the Project's recreational facilities, may be made and amended from time to time by the Association, in the manner provided in the Articles or Bylaws. Copies of such rules and regulations and Amendments thereto shall be furnished by the Association to all Unit Owners, occupants and Institutional Lenders on request.

7.15 **Proviso.** Provided, however, that notwithstanding anything herein contained or implied to the contrary in this Article 7, as long as the Developer is offering units for sale in the ordinary course of business, neither the Unit Owners nor the Association nor the use of the Condominium Property shall interfere with the marketing or sale of the Units by the Developer and the Developer may make such use of the unsold Units and all of the Common Elements as may facilitate the sale and/or other office(s), the erection and maintenance of models, the holding of various sales/promotional events or functions and the maintenance and display of signs and other sales exhibits and advertising materials.

## ARTICLE 8

### **Maintenance, Repair, Replacement; Additions, Alterations and Improvements**

8.1 **Maintenance, Repair, Replacement, Additions, Alterations and Improvements.** The responsibility for the maintenance, repair and replacement of the Condominium Property and restrictions upon additions, alterations and improvements thereto shall be as hereinafter provided.

8.2 **Maintenance, Repair and Replacement by the Association.** The Association shall maintain, repair and replace, as part of the Common Expenses:

(a) All portions of a Unit (except interior surfaces and coverings) contributing to the support of the Building in which the Unit is located, which portions shall include, but not limited to, exterior walls and interior demising or party walls of the Building, roofs, structural components, floor and ceiling joists and slabs, load-bearing columns and load-bearing walls;

(b) All conduits, ducts, plumbing, pipes, wiring and other facilities for the furnishing of utility services contained in the portion of a Unit to be maintained by the Association, and all such conduits, ducts, plumbing, pipes, wiring and other facilities contained within a Unit that service part or parts of the Condominium other than or in addition to the Unit within which they are contained;

(c) All air-conditioning and heating equipment providing service to the Common Elements, but not the heating and air conditioning equipment serving only a particular Unit;

(d) All exterior surfaces, including screens and glass, except for those that are the responsibility of the Unit Owners as set forth elsewhere in this Declaration;

(e) All of the Common Elements and Limited Common Elements, except those that are the responsibility of the Unit Owners;

(f) The Association shall cause all Common Element entrances, and all exterior windows and glass of a Unit not readily accessible to the Unit Owners to be maintained, washed, and cleaned from time to time, and the cost of such washing/cleaning shall be a Common Expense of the Association;

(g) All incidental damage caused to a Unit by such work shall be repaired promptly at the expense of the Association.

(h) All grounds, landscaping, and recreational facilities and amenities throughout the Condominium.

8.3 **Maintenance, Repair and Replacement by the Unit Owner.** The obligation and responsibility of each Unit Owner for maintenance, repairs and replacement, at the Unit Owner's sole cost and expense, shall be as follows:

(a) To maintain, repair and replace, all portions of the Unit (except the portions to be maintained, repaired and replaced by the Association), including, but not limited to: paint, finishes, floor coverings, walls and/or ceiling coverings, wallpaper and decoration of all interior walls, floors and ceilings; all built-in shelves, cabinets, counters, storage areas and closets; all refrigerators, stoves, ovens, disposals, dishwashers, trash compactors and other kitchen equipment; all appliances in the Unit; all bathroom fixtures, equipment and apparatus; all landscaping and plantings located within the interior of a Unit or on the terraces serving the Unit pursuant to the approval of the Board; all doors and windows, including sliding glass doors, and all glass, screens, framing and casings thereof; all non-load bearing and non-structural room partitions and dividers; and all furniture, furnishings and personal property contained within the Unit.

(b) To maintain, repair and replace all air-conditioning and heating equipment serving the Unit and located in the Unit or outside the Unit and the conduits and lines from such equipment to the Unit which shall be Limited Common Elements serving that Unit.

(c) To maintain, repair and replace:

(i) as to the terraces or balconies, all floor surfaces, including tile, all accessible windows and all fixed or sliding doors in and other portions of the entranceway(s) of or to such terraces or balconies, if any; and the wiring, electrical outlet(s) and fixture(s) thereon and all light bulbs therein, if any; and

(ii) The expense of installation, maintenance, operation, repair and replacement of hurricane shutters.

In the event a Unit Owner fails to properly maintain and repair the Unit or fulfill the obligations under this Article, the Association, at the direction of the Board of Directors, may make such repairs as the Board of Directors may deem necessary and the cost thereof shall be charged to and recovered from such Unit Owner. The Association shall be entitled in any action for collection from such Unit Owner to recover the cost of any repairs it shall make, plus interest at the highest lawful rate and reasonable attorneys' fees incurred by the Association in the collection thereof. Each Unit Owner shall promptly report to the Association any defects, damage or need for repairs which the Association is responsible for that comes to the attention of the Unit Owner.

8.4 **Additions, Alterations or Improvements by the Association.** Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$2,500.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements, only if the making of such addition, alterations or improvements shall have been approved by a majority of the Voting Interests of the Unit Owners. Any additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$2,500.00 or less in a calendar year may be made by the Association without approval of the Unit Owners. The cost and expense of any such additions, alterations or improvements to the Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses.

8.5 **Additions, Alterations or Improvements by Unit Owners.** The following restrictions shall apply to additions, alterations and improvements by Unit Owners:

(a) No Unit Owner shall make any additions, alterations or improvements in or to the Common Elements, or to any Limited Common Element, except for approved hurricane shutters, without the prior written consent of the Board of Directors or pursuant to rules and/or regulations adopted by the Board of Directors and with the approval of such other Unit Owners as may be required by the Florida Condominium Act. No enclosures of terraces, balconies or roof areas shall be permitted unless installed by the Developer or unless approved by the Board of Directors.

(b) No Unit Owner shall paint or otherwise decorate or change the appearance or architecture of all or any portion of the exterior of the Building, the Unit or the Limited Common or Common Elements without the prior written consent of the Board of Directors, and with the approval of such other Unit Owners as may be required by the Florida Condominium Act, except as may be otherwise expressly provided herein.

(c) The Board of Directors shall have the obligation to answer any written request by a Unit Owner for approval of such additions, alterations or improvements in such Unit Owner's Limited Common Elements within thirty (30) days after such request and all additional information requested by the Board is received, and the failure to so answer within the stipulated time shall constitute the Board's consent, provided that during such period, the Board shall have the absolute right, with or without cause, to reject any such request.

(d) The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise.

(e) Once approved by the Board, such approval may not be revoked thereafter.

(f) A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, to hold the Association and all other Unit Owners harmless from any liability or damage to the Condominium Property and

expenses arising therefrom, and such Unit Owner shall be solely responsible for the maintenance, repair, replacement and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.

(g) If the Owner fails to construct the addition, alteration or improvement in the manner approved, the Owner shall be obligated to make all corrections necessary and if such Owner fails to do so, the Association, upon notice to the Owner, may make such corrections and demand payment from such Owner for all the cost of such correction and to seek collection for nonpayment, together with interest thereon at the highest lawful rate and reasonable attorney's fees.

(h) The Board may appoint an Architectural Control Committee to assume the foregoing functions on behalf of the Board.

## **ARTICLE 9** **Assessments**

9.1 **Assessments.** The making and collection of assessments against the Unit Owners for the Common Expenses shall be pursuant to the Condominium Act, the Bylaws and the provisions hereinafter provided.

9.2 **Share of Common Expenses.** Each Unit shall, except as otherwise specifically provided in Sections 9.8, 9.9, 9.10, and 9.13 hereof and subject to possible adjustment under the circumstances described in Sections 4.2, 5.4 and 5.5 hereof, be liable for its Percentage Interest of the Common Expenses as set forth in Section 6.2.

9.3 **Annual Budget of Common Expenses.** The Annual Budget of Common Expenses for the Association and the Condominium shall be adopted by the Board of Directors of the Association.

9.4 **Right of Association to Collect Interest and Late Charges.** The Association shall have the right to collect interest on and late charges on delinquent assessments. The rate of interest and the amount of the late charges payable shall be uniform, shall not exceed those permitted by law and shall either be set forth in the Bylaws of the Association or, if not, shall be established from time to time by the Board of Directors of the Association.

9.5 **Right of Association to Accelerate Assessments.** In the event a Unit Owner becomes delinquent in the payment of any installment of an assessment, the Association shall have the option and right, in addition to all other rights and remedies it may have with respect to the delinquent assessment, of accelerating the obligation of such delinquent owner to pay the remaining balance of the assessments due from the Unit Owner for the current fiscal year of the Association. The entire accelerated assessment shall be due, at the Association's option, upon its execution and recording of its Claim of Lien in the Public Records and mailing of its Notice of Acceleration and Intent to Foreclose Lien to the delinquent Unit Owner. Such delinquent Unit Owner shall also be obligated to promptly pay any and all interim assessment increases occurring after the acceleration of the unpaid installments (i.e., the balance) of the assessment by the Association.

9.6 **Interest; Late Charges; Application of Payments.** Assessments and installments of such assessments paid on or before ten (10) days after the date when due shall not bear interest (including accelerated assessments), but all such sums not paid on or before ten (10) days after the date when due shall bear interest at the maximum rate of interest allowed by law from the date when due until paid and shall be subject to late charges as determined by the Board of Directors from time to time. All payments upon account shall be first applied to interest, if any, and then to the principal amount of the payment first due. All interest collected shall be credited to the general expense account.

9.7 **Lien for Assessments.** There shall be a lien on each Unit for unpaid assessments, including Special Assessments, together with interest as provided by the Condominium Act, which shall also secure the costs and reasonable attorneys fees, legal assistant fees, paralegal fees and reasonable accounting fees incurred by the Association incident to the collection of such assessments and/or the preparation, enforcement and foreclosure of such lien, whether suit is filed or not, and, whether such legal fees, legal assistant, paralegal and accounting fees are for negotiations, trial, appellate or other legal services. All lien rights and remedies of the Association with respect to any Unit shall, except as otherwise hereinafter specifically provided in this Article, at all times be subject and subordinate to the lien of any first mortgage held by an Institutional Lender upon such Unit, and to all amendments, modifications, renewals, extensions and consolidations thereof and all voluntary and involuntary future advance made thereunder. Nothing herein contained shall be construed as releasing an Institutional Lender or other purchaser who acquires title to a Unit by foreclosure or deed in lieu of foreclosure from responsibility (a) for payment of that Unit's share of Common Expenses and Assessments accruing during such Lender's or purchaser's ownership of the Unit, whether the Unit is occupied or unoccupied, and (b) for payment of unpaid assessments that became due prior to its receipt of the deed and acquisition of title to the Unit, as however limited in amount and prior time period by the provisions of Section 718.116(1), Fla. Stat.

### **9.8 Special Assessments and Other Charges.**

(a) In addition to the assessments authorized in other sections of this Declaration, the Association may levy a Special Assessment or Special Assessments from time to time for the payment of extraordinary or non-budgeted common expenses; provided, such assessment shall have the affirmative vote or written consent of a majority of the members of the Board of Directors. Special Assessments shall be payable in such manner and at such times as determined by the Board of Directors, and may be payable in installments if the Board so determines.

(b) The Association may charge an Owner to reimburse the Association for costs incurred in bringing a Unit Owner or an Owner's Unit into compliance with the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations, which charge may be imposed upon the vote of the Board after notice to the Unit Owner and an opportunity for a hearing. If the Unit Owner fails to pay such charge, the Association may seek collection for non-payment, together with interest thereon at the highest lawful rate and reasonable attorney's fees.

9.9 **Water, Sewer and Gas Service Bills.** Each month (or periodic billing cycle) the Condominium Association will receive bills from the water and sewer utility company and the gas utility company for the entire amount of water and gas used during that period. The entirety of each bill will be paid by the Association. These amounts are included in the Estimated Operating Budget.

9.10 **Rental Pending Foreclosure.** In any action involving a foreclosure of a lien for assessments, the owner of a Unit subject to the lien may be required by the Court in its discretion, if occupying the Unit during the pendency of the foreclosure, to pay reasonable rental for the Unit during the period of such occupancy and the Association shall be entitled to the appointment of a receiver to collect the same.

9.11 **Schemes or Devices to Avoid Liability for Assessments.** The liability of a Unit Owner or Unit Owners for assessments may not be avoided or abated by the Unit Owner(s) by waiving or abandoning, either voluntarily or involuntarily, the use of the Unit or the Common Elements or by an interruption in or an interference with the availability of or use of the Unit or Common Elements to the Unit Owner.

9.12 **Increases in Assessments.** In the event that the annual assessments, as proposed for any fiscal year exceed 115 percent of assessments for the preceding fiscal year, the Board shall conduct a special meeting of the Unit Owners to consider a substitute budget if the Board receives, within twenty-one (21) days after adoption of the annual budget, a written request for a special meeting from at least ten percent (10%) of all voting interests. If the Developer controls the Board, assessments shall not exceed 115% of assessments for the prior fiscal year unless approved by a majority of all voting interests. The special meeting shall be conducted within sixty (60) days after adoption of the annual budget. At least fourteen (14) days prior to such special meeting, the Board shall hand deliver to each Unit Owner, or mail to each Unit Owner at the address last furnished to the Association, a notice of the meeting. An officer or manager of the Association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement and such affidavit shall be filed among the official records of the Association. Unit Owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the By-laws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the Board shall take effect as scheduled.

Any determination of whether assessments exceed 115% of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the condominium property, anticipated expenses of the Association which the Board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property.

9.13 **Developer Guaranty of Amount of Assessments.** The Developer has guaranteed to the Unit Owners that during the period from the date of the recording of the Declaration of Condominium for the Condominium (the "Recording Date") until the earlier of (a) twelve months after such Recording Date, or (b) the date on which the Developer transfers control of the Condominium Association to Unit Owners other than the Developer (herein the "Guarantee Period"), the quarterly assessment for common expenses of the Condominium and the Condominium Association levied against the Units owned by Unit Owners other than the Developer will not exceed \$332.37.

The Developer intends on voting to waive reserves, pursuant to Section 718.116(9)(a)(2), Florida Statutes for the first twelve month period beginning on the date this Declaration is recorded, as such the guaranteed assessment amount set forth above is reflective of only operating expenses and is not intended to include reserves.

The Developer also reserves the right, in its sole option and discretion, to extend the term of the Guarantee Period from the initial ending date of the Guarantee Period until no more than two (2) years thereafter. In the event that Developer elects to so extend the Guarantee Period, it shall notify the Owners in writing of such election.

Therefore, during the term of the Guarantee Period, the Developer shall be excused from the payment of its share of common expenses which would have been assessed against unsold Units owned by the Developer. Unsold Units owned by the Developer, to this limited extent, therefore will not be subject to assessments for common expenses.

## **ARTICLE 10** **Association**

10.1 **Association.** The operation of the Condominium shall be by Blackburn Point Marina Village, a Condominium Association, a corporation not for profit organized under the laws of the State of Florida, which shall fulfill its functions pursuant to the provisions hereinafter set forth. Notwithstanding anything herein contained or implied to the contrary, the Association shall fulfill its functions and obligations without discriminating against any Unit Owner or any group of Unit Owners.

10.2 **Articles of Incorporation of the Association.** A copy of the Articles of Incorporation of the Association is attached to this Declaration as Exhibit "B".

10.3 **Powers.** The Association shall have all of the powers and duties reasonably necessary to operate the Condominium Property as set forth in the Condominium Act, this Declaration and the Articles of Incorporation and Bylaws of the Association, and as the same may be amended from time to time. It shall also have the power prior to and subsequent to the recording of this Declaration to acquire and enter into agreements whereby it acquires leaseholds, memberships and other possessory or use interests in real and personal property, including, but not limited to country clubs, club houses, golf courses, marinas and their recreational facilities, whether or not contiguous to the Lands of the Condominium, intended to

provide for the enjoyment, recreation or other use or benefit of Unit Owners and to declare the expenses of rental, membership fees, operation, replacements and other undertakings in connection therewith to be Common Expenses and may make such covenants and restrictions respecting the use of the facilities not inconsistent with the Condominium Act as may be desired. The Association shall also have the power to contract for the management of the Condominium and to delegate to the contractor all of the powers and duties of the Association except such as are specifically required by this Declaration, the Bylaws, or the Florida Condominium Act to have the approval of the Board of Directors or the membership of the Association. Notwithstanding the foregoing, the Association may not make any modification, alteration, or improvement to the Surface Water Management System Facilities without the consent of the Southwest Florida Water Management District, its successors or assigns and the Sarasota County Engineer or his authorized designee. In the event of conflict, the Declaration shall take precedence over the Articles of Incorporation, Bylaws and applicable Rules and Regulations; and the Bylaws shall take precedence over applicable Rules and Regulations; all as amended from time to time. Amendments to the Articles and Bylaws shall be recorded in the Public Records of Sarasota County, Florida and shall identify, on the first page thereof, the Book and Page of the Public Records where this Declaration is recorded.

10.4 **Right of Association to Collect Security Deposits.** The Association shall also have the power and authority to charge a prospective lessee of a Unit Owner a reasonable security deposit not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to secure the Association against damage to the Common Elements or the Association Property when the Unit Owner rents a Unit.

10.5 **Additional Powers of Association.** The Association shall have the irrevocable right of access into any Unit during reasonable hours when necessary to make emergency repairs and to do other work necessary for the proper maintenance, repair or replacement of any Common Elements of the Condominium. The Association shall also have the right and power to grant and relocate easements, licenses and permits over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium. The Association shall also have the power to adopt and amend rules and regulations governing the details of the operation and use of the Condominium Property.

10.6 **Obligations of the Association.** The Association shall have all of the obligations imposed upon it by the Florida Condominium Act. In addition, the Association shall make available to Unit Owners and to all Institutional Lenders holding a mortgage on any Unit in the Condominium and to insurers of any first mortgages current copies of the Declaration of Condominium, the Articles and Bylaws of the Association, the Rules and Regulations or other items within the Official Records for inspection during normal business hours and copying thereof at the expense of the inspecting party.

The Association shall also make available to prospective purchaser current copies of the Declaration of Condominium, the Articles and Bylaws of the Association, the Rules and Regulations of the Condominium and the most recent annual financial statement of the Association.

If the Federal Housing Administration, Veterans' Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation owns or insures a mortgage on a Unit in the Condominium, the Association shall prepare and furnish to such agency upon request, an audited financial statement, if such statement is required by Section 718.111(13), Florida Statutes, of the Association for the immediately preceding fiscal year of the Association.

10.7 **Bylaws.** The administration and management of the Association and the operation of the Condominium Property shall be governed by the Bylaws, a current copy of which is attached as Exhibit "C" to this Declaration.

10.8 **Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for the injury or damage, other than the cost of maintenance and repair which shall be shared by all Units in accordance with their Percentage Interests, caused by any latent condition of the property to be maintained by the Association, or caused by the elements or other owners or persons.

10.9 **Restraint Upon Assignment of Shares and Assets.** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, encumbered or transferred in any manner, except as an appurtenance to the Unit.

10.10 **Approval or Disapproval of Matters.** Whenever a decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressly made by the same person who would cast the vote of such owner in an Association meeting, unless the joinder of all record owners is specifically required by this Declaration, the Articles of Incorporation or the Bylaws.

10.11 **Membership and Voting Interest and Rights.** All Unit Owners in the Condominium are and must be members of the Association. The owner(s) of each Unit shall be entitled to cast one vote as set forth in the Articles of Incorporation and in Table I (the Voting Interests) for each Unit owned as provided in the Bylaws.

10.12 **Right of Association to Cancel Contracts.** The Association shall have a right of termination of any contract or lease entered into by the Association prior to the turnover of the control of the Association by the Developer, which right of termination shall be exercisable without penalty, at any time after transfer of control of the Association by the Developer, upon not more than 90 days' written notice to the other party to such contract or lease.

10.13 **Developer's Right to Control and Manage Association During Development and Sales Period.** The Developer has and hereby reserves the right to control the management and operation of the Condominium and the affairs and decisions of the Association and its Board of Directors during the development and sales period of the Condominium by electing initially all and thereafter a majority of the Directors of the Association in accordance with Article 5.1 of the



Articles of Incorporation of the Association attached as Exhibit "B" hereto. Notwithstanding the foregoing, the Developer may terminate such right of control at any time with such notice as is required by Chapter 718, Florida Statutes, by relinquishing and waiving such right in writing and turning over control of the Board of Directors and the Association to the Unit Owners, who shall accept such turnover.

During the period the Developer retains such control, the Developer shall have the right to take all actions, make all decisions and do all things in behalf of the Association, including but not limited to the right to enter into contracts in behalf of the Association for the purchase of property and for maintenance, operation and management of the Association and the Condominium, the maintenance, repair and replacement of the condominium and property and facilities serving the Condominium, the determination of budgets and assessments and the levy and collection of assessments against the Unit Owners and the enactment and enforcement of uniform Rules and Regulations governing the ownership, occupancy and use of the Units and the Condominium Property.

While exercising such control and management, however, the Developer shall observe the format and formalities of the Association's corporate regime and structure, including maintenance of all required minutes, books and records and the provisions of the Condominium Act and any rule promulgated thereunder.

**10.14 Assignment by Developer to Association.** The Developer will, upon completion and sale of all of the Units in the Condominium, assign and the Association will accept assignment of all of its remaining rights and obligations under any development agreement, development order, easement agreement, and the like.

## **ARTICLE 11**

### **Insurance**

**11.1 Insurance.** The insurance, other than title insurance, which shall be carried upon the Condominium Property and the property of the Unit Owners shall be governed by the provisions hereinafter set forth.

**11.2 Authority to Purchase; Named Insured.** The Association shall have the following responsibilities:

(a) The Association shall use its best efforts to obtain and maintain adequate insurance to protect the Association, the Association Property, and the Condominium Property required to be insured by the Association pursuant to the Condominium Act. A copy of each policy of insurance in effect shall be made available for inspection by the Unit Owners at all reasonable times.

(b) All hazard policies issued to protect the Building shall provide that the word "building" wherever used in the policy shall include, but shall not necessarily be limited to, fixtures, installations, or additions comprising that part of the Building within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the individual Units installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as existed at the time the Unit was initially conveyed if the original plans and specifications are not available. However, the word "building" shall not include floor coverings or ceiling coverings. With respect to the coverage provided for by this paragraph, the Unit Owners shall be considered additional insureds under the policy.

**11.3** All insurance policies upon the Condominium Property shall be purchased by the Association and the named insured shall be the Association, individually, and for the use and benefit of Unit Owners, naming them and their mortgagees as their interests may appear. Provision shall be made for the issuance of mortgage endorsements and memoranda of insurance to the mortgagees of Unit Owners.

**11.4 Mortgagee Approval.** So long as an Institutional First Mortgagee shall hold a mortgage upon at least a majority of the Units in the Condominium, such mortgagee shall have the right to approve the insurer on all insurance policies covering the Condominium Property, and the Association shall submit to the mortgagee proof of payment of the annual premiums on all such insurance policies purchased by the Association. If the Association fails to procure any of the requisite insurance coverages hereunder and to pay the premiums therefor, the Institutional Lender will have the right to order and pay for the policies and be subrogated to the assessment and lien rights of the Association with respect to such payment. This subparagraph shall be construed as a covenant for the benefit of, and may be enforced by, any such Institutional First Mortgagee.

**11.5 Casualty.** All of the facilities in the Condominium, including all Buildings and improvements and all personal property belonging to the Association or a part of the Common Elements, shall be insured in an amount equal to 100% of their then current replacement cost (subject to a commercially reasonable deductible) excluding land, foundations, excavations and other items that are usually excluded from such insurance coverage, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

(a) Loss or damage by fire and all other hazards normally covered by the standard extended coverage endorsement and all other perils customarily covered in similar types of projects, including those covered by the standard "all risk" endorsement;

(b) "Master" or "blanket" policy of flood insurance if the Condominium or any portion thereof is located in a special flood hazard area, as defined by the Federal Emergency Management Agency or its successors, in an amount not less than the lesser of (i) the maximum coverage available at subsidized rates under the National Flood Insurance Program for all Buildings and other insurable property within the Condominium located within the special flood hazard area, or (ii) 100% of current replacement costs thereof.

(c) Such other risks as from time to time shall be customarily covered with respect to Buildings similar in construction, location and use as the Buildings on the land, but not limited to, vandalism and malicious mischief.

The casualty policy shall contain a waiver of the right of subrogation against Unit Owners individually, a provision that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of the Unit Owners collectively and a provision that the policy is primarily in the event the Unit Owner has other insurance covering the same loss.

11.6 **Public Liability.** A comprehensive general liability insurance policy shall be carried on the Common Elements and all other areas under the supervision of the Association in an amount of at least \$1,000,000 for bodily injury, death and property damage for any single occurrence, with excess coverage of at least \$2,000,000. The liability insurance shall provide coverage for death, bodily injury and property damage that results from the operation, maintenance or use of the Common Elements and any liability related to employment contracts to which the Association is a party. Additional public liability insurance shall be carried in such amounts and with such coverages as shall be determined by the Board of Directors of the Association, including, but not limited to, hired automotive and non-owned automobile coverages and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

11.7 **Workers' Compensation.** Workers' compensation insurance shall be carried to meet the requirements of the law.

11.8 **Other Insurance and Special Endorsements.** The Association shall carry such other insurance and special endorsements as (i) the FHA, VA, FNMA and/or the FHLMC may require as a condition to continued Project approval so long as any such organization holds or insures a mortgage in the Condominium, and (ii) the Board of Directors shall determine from time to time to be desirable, including, without limitation, directors and officers liability insurance.

11.9 **Notice of Cancellation or Changes; Premiums.** All insurance policies purchased by the Association shall require the insurer to give the Association and each holder of a first mortgage on a Unit in the Condominium at least ten (10) days prior written notice before it cancels or substantially changes the coverage for the Condominium. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

11.10 **Association as Agent.** The Association is irrevocable appointed agent for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property, to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims, provided, however, that no claims relating to an individual Unit upon which there is an institutional first mortgagee shall be settled without the consent of the Institutional Lender holding the mortgage; and provided further, that if the Institutional First Mortgage who holds mortgages securing a greater aggregate indebtedness than any other mortgagee requests the Association to appoint an Independent institutional insurance trustee, the Association shall appoint such a trustee to handle the collection and disbursement of all casualty and property insurance proceeds; and provided further that no claims in excess of \$250,000 affecting the Common Elements shall be settled without the consent of all Institutional First Mortgagees.

11.11 **Reconstruction and Repair.** If any part of the Condominium Property shall be damaged by casualty, it shall be reconstructed or repaired immediately upon the availability of insurance proceeds unless it is determined in the manner elsewhere provided that the Condominium shall be terminated. Notwithstanding anything hereinabove contained or implied to the contrary, if the Condominium or any part thereof is damaged by fire or other casualty, such damage shall be restored and repaired according to the original plans and specifications unless those Institutional Lenders holding first mortgages on at least 40% of the Units agree otherwise.

11.12 **Plans and Specifications.** Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Building, or if not, then according to plans and specifications approved by the Board of Directors of the Association and Institutional First Mortgagees holding mortgages on the Units involved.

11.13 **Responsibility.** If the damage is only to those parts of a Unit for which the responsibility of maintenance and repair is that of the Unit Owner, the then Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility for reconstruction and repair after casualty or other damage shall be that of the Association. Insurance proceeds shall be applied to such reconstruction and repair, except for damage or destruction caused by the intentional or negligent act or omission of a Unit Owner which shall be the responsibility of that Unit Owner to the extent not covered by insurance.

11.14 **Estimates of Cost.** Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

11.15 **Assessments.** If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, the funds for the payment of the costs thereof are insufficient, the Association shall pay over sufficient amounts to provide funds to pay the estimated costs, which amount shall be part of the Common Expenses of the Association assessed against Unit Owners.

11.16 **Construction Funds.** The funds for payment of costs and reconstruction and repair after casualty, which shall consist of proceeds of insurance and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association. The first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds, and if there is a balance in the

construction fund after payment of all costs of reconstruction and repair for which the fund is established, such balance shall be distributed to the Association as Common Surplus.

11.17 **Institutional Lender's Right to Advance Premiums.** Should the Association fail to pay such premiums when due, or should the Association fail to comply with other insurance requirements of the Institutional Lender holding the greatest dollar volume of Unit mortgages, such Institutional Lender(s) shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance, and to the extent of the money so advanced, the mortgagee(s) shall be subrogated to the assessment and lien rights of the Association against the individual Unit Owners for the payment of such item of Common Expense.

11.18 **Personal Insurance.** Each individual Unit Owner shall be responsible for purchasing, at his, her or its own expense, liability insurance to cover accidents occurring within the Unit or on that Unit's Limited Common Elements, insurance coverage for all personal property, including without limitation floor coverings, wall coverings, ceiling coverings, electrical fixtures, appliances, air conditioning and heating equipment, water heaters and built-in cabinets and other built-in items and insurance coverage for all exterior doors and windows of the Unit and glass and screen in all windows and sliding doors. Insurance policies issued to individual Unit Owners shall provide that the coverage afforded by such policies is primary and that any amount recoverable under any other policy covering the same property would be secondary and neither that Unit Owner or his/her insurer would have any rights of subrogation against the Association.

11.19 **General Requirements.** If available, and where applicable, the Association shall endeavor to obtain policies which provide that the insurer waives its right of subrogation as to any claims against Unit Owners, the Association, their respective servants, agents and guests. Insurance companies authorized to do business in the State of Florida shall be affirmatively presumed to be good and responsible companies and the Board of Directors of the Association shall not be responsible for the quality or financial responsibility of the insurance companies, provided they are licensed to do business in the State of Florida.

11.20 **Equitable Relief.** Any Unit Owner and any Institutional Lender owning and holding a mortgage encumbering a Unit in his Condominium shall have the right to petition a court having equity jurisdiction in and for the County where the Condominium Property is located for equitable relief relating to the provisions, rights and obligations of this Article.

11.21 **Damage by Unit Owner.** In the event any damage not covered by insurance is caused to any Unit and/or the Common Elements by a Unit Owner or a tenant, occupant, guest, licensee or invitee thereof or any pet of the foregoing, such damage shall be repaired at the cost and expense of the Unit Owner. If the Unit Owner fails to reimburse the Association for its costs and expenses, the Association may bring a collection action for non-payment, together with interest thereon at the highest lawful rate and reasonable attorney's fees.

## ARTICLE 12

### Maintenance of Community Interests

12.1 **Maintenance of Community Interests.** In order to maintain a community of congenial and compatible residents who are personally and financially responsible and thus protect the value of the Units, the transfer of Units by any owner other than the Developer or an Institutional lender shall be subject to the following provisions so long as the Condominium exists and the Units in useful condition exist upon the Land, which provisions each Unit Owners covenants to observe.

12.2 **Transfers Subject to Notice.** In connection with the conveyance of each Unit, other than conveyance by the Developer or Institutional Mortgagees, an officer of the Association shall execute and acknowledge a certificate stating that all Assessments levied against such Unit have been paid in full, the amounts due and owing. The Board shall furnish such certificate upon receipt from the Unit Owner of a request form (which will be prepared by the Association) setting forth the proposed Purchaser's name, notice address and date of closing. Payment of outstanding Assessments shall be in accordance with the Act. Each new Unit Owner receiving a conveyance from any party, except the Developer, shall notify the Association and the Management Firm, if any, promptly after becoming a new Owner by delivering a copy of the deed to the Unit to the Association and the Management Firm.

12.3 **Mortgage.** No Unit Owner other than the Developer or an Institutional Lender who acquires title by foreclosure or deed in lieu thereof may mortgage a Unit or any interest therein without the approval of the Association, except to an Institutional Lender, the Developer, the construction lender for the Condominium or to a Seller, to secure a portion or all of the purchase price. The approval of any other mortgagee may be upon conditions determined by the Association, or may be arbitrarily withheld.

12.4 **Exceptions.** The foregoing provisions of this Article 12 shall not apply to a transfer or to a purchase by Developer or by an Institutional Lender that acquires its title as the result of owning a mortgage upon the Unit concerned, and this shall be so whether the title is acquired by a deed from the mortgagor or through foreclosure proceedings, nor shall such provisions apply to a transfer or sale by Developer or by an Institutional Lender that so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a Unit at duly advertised public sale with open bidding provided by law, such as, but not limited to an execution sale, foreclosure sale, judicial sale or tax sale.

12.5 **Unauthorized Transactions.** Any sale, change of ownership, lease or mortgage which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Association.

12.6 **Notice of Lien or Suit.**

(a) **Notice of Lien.** A Unit Owner shall give notice, in writing, to the Association of every lien upon his or her Unit other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

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

(c) **Failure to Comply.** Failure to comply with this subsection concerning liens will not affect the validity of any judicial sale.

12.7 **No Unlawful Discrimination.** The provisions of this Article 12 shall not be used directly or indirectly for the purpose of enforcing unlawful discriminatory policies.

12.8 **Time Share Estates.** No Time Share Estates or Time-Share Units will or may be created in Blackburn Point Marina Village, a Condominium, or any Unit thereof.

**ARTICLE 13**

**Purchase of Units by Association**

13.1 **Purchase of Units by Association.** The Association shall have the power to purchase Units in the Condominium and to otherwise acquire and hold, mortgage and convey the same only in accordance with the following provisions:

(a) **Decision.** The decision of the Association to purchase a Unit and to acquire, hold, lease, mortgage and convey the same shall be made solely by its Board of Directors.

(b) **Limitation.** If at any one time the Association shall be the owner or contract purchaser of two (2) or more Units, it may not purchase any additional Units without the prior written approval of 70% of the Voting Interests of members eligible to vote thereon. A member whose Unit is the subject matter of the proposed purchase shall be eligible to vote thereon, and the Association may vote the votes attributable to the Units it owns. Provided, however, that the foregoing limitation shall not apply to Units to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent assessments where the bid of the Association does not exceed the amount found due the Association, or to be acquired by the Association in lieu of foreclosure of such lien if the consideration therefor does not exceed the cancellation of such lien.

**ARTICLE 14**

**Compliance and Default**

14.1 **Compliance and Default.** Each Unit Owner and occupant of a Unit shall be governed by and shall comply with the terms of the Declaration of Condominium, Articles of Incorporation, Bylaws and Rules and Regulations adopted pursuant thereto and as these documents and Rules and Regulations may be amended from time to time. Failure of a Unit Owner or occupant to comply shall entitle the Association or other Unit Owners to the relief provided for herein, in addition to the remedies provided by the Condominium Act.

14.2 **Enforcement.** The Association and its directors, officers and agents are hereby empowered to enforce this Declaration and the Bylaws and Rules and Regulations of the Association and has the irrevocable right of access to each Unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any Common Elements or any portion of a Unit to be maintained by the Association pursuant to the Declaration or as necessary to prevent damage to the Common Elements or Association Property.

14.3 **Fines.** The Association may levy reasonable fines against a Unit and/or its Owner(s) for failure of the owner of the Unit or its occupant, licensee or invitee to comply with any provisions of the Declaration, the Bylaws, or the Rules or Regulations of the Association. No fine shall become a lien against a Unit. No fine shall exceed the maximum allowed by law per violation or in the aggregate, nor shall any fine be levied against any Unit Owner except after giving of reasonable notice and opportunity for a hearing to the Unit Owner, and, if applicable, its tenants, licensee or invitees. A fine hereunder may be levied on the basis of each day of a continuing violation, with single notice and opportunity for hearing pursuant to Florida Statutes §718.303(3).

14.4 **Negligence.** A Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Unit Owner's act, neglect or carelessness, or by that of any member of such Unit Owner's family, such Unit Owner's guests, servants, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association and such other damages as may be suffered as the result of such actions. A Unit Owner shall pay as damages to the Association the amount of the Association's damages and losses occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances, or of the Common Elements, by the Unit Owner or such Unit Owner's family, tenants and/or guests, together with interest thereon at the highest lawful rate and reasonable attorney's fees.

14.5 **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of a Unit Owner to comply with the terms or provisions of the Declaration, the Bylaws or the Rules and Regulations adopted pursuant thereto,

as they may be amended from time to time, or for a declaratory judgment relating to the rights of the Association or Unit Owners thereunder, the prevailing party shall be entitled to recover the costs and expenses of the proceeding and reasonable attorneys' fees to be awarded by the court, whether for trial, appellate or other legal services.

14.6 **No Waiver of Rights.** The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Condominium Act, this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

#### **ARTICLE 15** **Amendments**

15.1 **Amendments.** Except as otherwise specifically provided herein and except as otherwise specifically reserved by or to the Developer in Section 5.4, 5.5 and 5.6 and 15.7, this Declaration of Condominium may be amended only in the manner hereinafter set forth.

15.2 **Notice.** Notice of the subject matter of a proposed Amendment shall be included in the notice of all meetings which a proposed Amendment is to be considered.

15.3 **Resolution of Adoption.** A resolution adopting a proposed Amendment may be proposed by either the Board of Directors of the Association or by at least thirty percent (30%) of the Voting Interests of the Association. Directors and members not present in person or by proxy at the meeting considering the Amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as otherwise required by the Florida Condominium Act and except as elsewhere provided, such approvals must be by not less than 50% of the Voting Interests of the entire membership of the Association.

15.4 **Limitation on Amendment.** Provided, however, that no Amendment shall discriminate against any Unit Owner or any Unit nor against any class or group of Unit Owners or Units unless the Unit Owners so affected shall consent thereto, provided, further however, that notwithstanding anything herein contained to the contrary, any Amendment which changes the configuration or size of any Unit in any material fashion, materially alters or modifies the appurtenances of the Unit, or changes the proportion or percentage by which the Unit owner shares the Common Expenses and owns the Common Surplus, except as provided in Article 4.2 when the Developer combines units owned by the Developer and in Article 5.5, or which permits Time-Share Estates to be created in any Unit of the Condominium, shall not be effective unless the record owner of the Unit and all record owners of liens on it shall join in the execution of the Amendment and unless at least a majority of the total Voting Interests approve the Amendment. No Amendment shall change the provisions of any "Proviso" in this Declaration, Sections 4.3, 4.4 or 4.5, 5.2(f) or (j), 5.4, 9.9, 10.13, 12.5, 15.4, 15.5 or 16.6 or Article 19 without the Developer's consent. The right of the Developer to approve amendments to the Declaration shall terminate when the Developer no longer holds units for sale in the ordinary course of business.

15.5 **Further Limitation on Amendments.** No Amendments shall adversely affect the rights, easements, licenses and/or privileges of the Developer, its heirs, personal representatives, successors, assigns, grantees, designees or nominees necessary to complete the development, construction and sale of this Condominium and the Units.

No Amendment that would alter or interfere with the rights of the Developer hereunder or which would increase the Developer's obligations hereunder shall be effective without the prior written consent of the Developer, its heirs, personal representatives, successors, assigns, grantees, designees or nominees.

Any amendment to these documents which would affect the surface water management system for the Condominium, including the water management portions of the common elements or common areas, must have the prior written approval of the Southwest Florida Water Management District.

Notwithstanding any provision of this Declaration to the contrary, mortgagee consent shall not be required for any amendment to this Declaration unless such amendment materially affects the rights and interests of any mortgagee, or is otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and no mortgagee shall unreasonably withhold its consent to any proposed amendment. Except for amendments to this Declaration changing the configuration or size of any Condominium Unit in any material fashion, materially altering or modifying the appurtenances to any Condominium Unit, or changing the proportion or percentage by which the owner of any Condominium Unit shares the common expenses and owns any common surplus and except for any amendments to this Declaration permitting time-share estates, amendment to this Declaration shall be presumed not to materially affect the rights or interests of mortgagees. In the event that mortgagee consent to any amendment to this Declaration is provided other than by a properly recorded joinder, such consent shall be evidenced by an affidavit of an officer of the Association recorded in the Public Records of Sarasota, Florida.

15.6 **Execution and Recording.** Except as provided in Sections 5.4, 5.5, 5.6 and 15.7 herein and except as otherwise specifically provided herein, a copy of each such Amendment shall be attached to a certificate by the Association certifying that the Amendment was duly adopted, which certificate shall be executed by the appropriate officers of the Association with all the formalities of a deed. Any such Amendment shall be effective only when such certificate and copy of the Amendment are recorded in the Public Records of Sarasota County, Florida.

15.7 **Additional Rights of Developer to Amend Declaration.** The Developer reserves the right to amend this Declaration and/or any of the Exhibits hereto, without the joinder or consent of the Association, the Unit Owners, Institutional Mortgages, or any other person if such Amendment (a) is necessary for the creation of a valid Condominium under the Florida Condominium Act or to correct deficiencies in the Condominium documents by including items required by the Florida Condominium Act, (b) is necessary to correct a scrivener's or preparer's or recording error or omission, (c)

does not materially and adversely affect the property rights of Unit Owners, or (d) is authorized by other provisions of this Declaration. Any such Amendment need only be signed by the Developer and recorded in the Public Records of Sarasota County, Florida.

## **ARTICLE 16** **Termination**

16.1 **Termination.** The Condominium, subject to the provisions of Section 16.6 hereof, may be terminated in the manner hereinafter provided, in addition to the manner provided in the Condominium Act. When the Board intends to terminate the condominium the Board shall so notify the Division before taking any action to terminate the condominium. Upon recordation of the instrument evidencing consent of all of the Unit Owners to terminate the condominium, the Association within thirty (30) days shall notify the Division of termination and the date the document was recorded, the County where the document was recorded, and the Book and Page number of the Public Record where the document was recorded, and shall provide the Division with a copy of the recorded termination notice certified by the Clerk.

16.2 **Agreement.** The Condominium, subject to the provisions of Section 16.6 hereof, may be terminated by the approval in writing of all the Owners of the Units therein, and by all record owners of mortgages thereon. Notwithstanding the foregoing if the proposed termination is submitted to a meeting of the members of the Association the notice of which meeting gives notice of the proposed termination, and if the approval of the owners of not less than eighty percent (80%) of the Voting Interests together with the unanimous consent of the record owners of all mortgages upon the Units represented by such Voting Interests, are obtained in writing, not later than thirty (30) days from the date of such meeting, then the approving owners shall have an option to buy all of the Units of the other owners for the period ending on the sixtieth (60th) day from the date of such meeting. Such approvals shall be irrevocable until the expiration of the option, and if the option is exercised, the approvals shall be irrevocable. Such option shall be upon the following terms:

(a) **Exercise of Option.** The Option shall be exercised by delivery or mailing by certified mail to each of the record owners of the Unit to be purchased, of an agreement to purchase signed by the record owners of the Units who will participate in the purchase. Such agreement shall indicate which Units will be purchased by each participating owner and shall agree to purchase all of the Units owned by owners not approving the termination, but the agreement shall constitute a separate contract between each seller and his purchaser.

(b) **Price.** The sale price for each Unit shall be the fair market value determined by agreement between seller and purchaser within thirty (30) days from the delivery or mailing of such agreement, and in the absence of agreement as to price, it shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two real estate appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit; and a judgment of specific performance of the sale upon the award rendered by the arbitration may be entered in any court of competent jurisdiction. The expense of the arbitration shall be split equally between the parties.

(c) **Payment.** The purchase price shall be paid in cash at closing.

(d) **Closing.** The sale shall be closed within twenty (20) days following the determination of the sale price.

16.3 **Certificate.** The termination of the Condominium shall be evidenced by a certificate of the Association executed by the President and Secretary certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Public Records of Sarasota County, Florida.

16.4 **Shares of Owners After Termination.** After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants-in-common, in undivided shares, and their respective mortgages and lienors shall have mortgages and liens upon the respective undivided shares of the Unit Owners. Such undivided shares of the Unit Owners shall be the same as the undivided shares in the Common Elements appurtenant to the owners' Unit prior to termination.

16.5 **Termination by Developer.** Notwithstanding anything herein contained to the contrary, the Developer may terminate this Condominium at any time prior to the recordation of the conveyance of the first Unit by filing and recording an instrument in the Public Records of Sarasota County, Florida, specifying that the Condominium is terminated AND that is consented to by all mortgagees holding mortgages on the Lands and the Units in which event this Declaration and all Exhibits hereto and all plats thereof shall be of no further force and effect.

16.6 **Limitation on Unit Owner's Right to Terminate.** Notwithstanding anything herein contained to the contrary, until the Developer has sold all Units of this Condominium, or until the Developer elects by a recorded instrument in writing to waive its rights whichever occurs first, the Condominium may not be terminated without the written consent of the Developer.

16.7 **Amendment.** This section, Section 16, concerning termination cannot be amended.

16.8 **Proviso.** Notwithstanding anything herein contained or implied to the contrary, this Condominium shall not be terminated without the prior written and unanimous approval from Institutional Lenders holding first mortgages on at least 80% of the Units in the Condominium. In addition, the provisions of this Declaration pertaining to the surface water management system of the Condominium shall survive for at least 25 years from the date of recording of this Declaration regardless of any termination of the Condominium.

**ARTICLE 17**  
**Institutional Lenders**

17.1 **Institutional Lenders; Notices.** Upon written request to the Association identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any such eligible Institutional Lender, insurer or guarantor shall be entitled to timely written notice by the Association of: (a) any proposed Condominium Amendment; (b) any proposed termination of the Condominium; (c) any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is first mortgage held, insured or guaranteed by such eligible mortgage holder, insurer or guarantor, as applicable; (d) any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to a first mortgage held, insured or guaranteed by such eligible holder, insurer or guarantor which remains uncured for a period of sixty (60) days; (e) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action which requires the consent of any specified percentage of Institutional Lenders.

17.2 **Additional Rights of Institutional First Mortgagees.** In addition to all other rights herein set forth, Institutional First Mortgagees shall have the right, upon written request to the Association, to:

- (a) Examine the Association's books;
- (b) Receive notice of Association meetings and attend such meetings;
- (c) Receive notice of an alleged default by any Unit Owner, for whom such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to such Unit Owner; and
- (d) Receive notice of any substantial damage or loss to any portion of the Condominium Property.

**ARTICLE 18**  
**Severability**

18.1 **Severability.** The invalidity in whole or in part of any covenant or restriction, or any section, subsection, clause, phase or word, or other provision in this Declaration of Condominium, the Exhibits attached hereto and the Articles of Incorporation, Bylaws and Regulations of the Association shall not affect the validity of the remaining portions thereof.

**ARTICLE 19**  
**Additional Rights of Developer**

19.1 **Election, Removal and Replacement of Directors and Officers of Association.** Developer hereby reserves unto itself, its successors, designees and assigns during the development and sale period, the exclusive right to elect, to remove and to replace from time to time the officers and directors of the Association (who need not be Unit Owners) as provided in the Articles of Incorporation of the Association. The Developer may terminate such rights earlier than provided in the Articles of Incorporation by voluntarily relinquishing control of the election of the Board of Directors to the Unit Owners at any time who must immediately accept such turnover.

19.2 **Miscellaneous.** The Developer reserves the right to use the name "Blackburn Point Marina Village" and all similar names in connection with future developments.

19.3 **Developer's Rights Inure to Benefit of Its Designees, Successors and Assigns.** All powers, privileges, easements, rights, reservations, restrictions and limitations herein reserved or otherwise created for the benefit of the Developer shall inure to the benefit of the Developer's designees, successors and assigns, and to such Lands or portion thereof owned by them.

**ARTICLE 20**  
**Miscellaneous**

20.1 **Notices.** All notices to the Association required or desired hereunder or under the Bylaws of the Association shall be sent by certified mail (return receipt requested) to the Association c/o its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address, as may be designated by them from time to time in writing to the Association. All notices shall be deemed to have been given when mailed in the postage prepaid sealed wrapper, except notices of change of address, which shall be deemed to have been given when received, or five (5) business days after proper mailing, whichever shall first occur.

20.2 **Interpretation.** The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of counsel to the Association that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.

20.3 **Exhibits.** There is hereby incorporated in this Declaration any materials contained in the Exhibits attached hereto which under the Act are required to be part of the Declaration.

20.4 **Signature of President and Secretary.** Whenever the signature of the President of the Association is required hereunder, the signature of a Vice-President may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an Assistant Secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.

20.5 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits attached hereto or applicable Rules and Regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

20.6 **Waiver.** No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may have occurred in the past.

20.7 **Ratification.** Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and Bylaws of the Association, and applicable Rules and Regulations, are fair and reasonable in all material respects and are fully enforceable in accordance with their terms.

20.8 **Execution of Documents; Attorney-in-Fact.** Without limiting the generality of other Articles of this Declaration and without such other Articles limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Project known as "Blackburn Point Marina Village, a Condominium," as hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owners' agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest.

20.9 **Gender; Plurality.** Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and use of any gender shall be deemed to include all or no genders.

20.10 **Captions.** The captions herein and in the Exhibits attached hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

20.11 **Definitions.** The terms used in this Declaration shall have the meanings stated in the Condominium Act and as herein provided, unless the context otherwise requires.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this \_\_\_ day of August, 2005.

Witnesses: *[Signature]*  
Print Name: DIANE DONAHUE

BLACKBURN POINT MARINA VILLAGE, LLC,  
a Florida limited liability company

*[Signature]*  
Print Name: LAURENCE C. SALERNO

By *[Signature]*  
Dana A. Chase, Manager 8-12-05

STATE OF MISS  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 12 day of August, 2005, by Dana A. Chase as Manager of BLACKBURN POINT MARINA VILLAGE, LLC, a Florida limited liability company [ ] who is personally known to me; or [ ] who has produced a drivers license as identification.

*[Signature]*  
Print Name: DIANE DONAHUE  
Notary Public  
My Commission Expires: 8/7/09



Witnesses: Walter Donahue  
Print Name: WALTER DONAHUE

Louise B. Staley  
Print Name: LOUISE B. STALEY JR.

Joined by the ASSOCIATION:

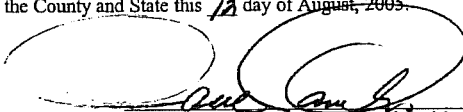
BLACKBURN POINT MARINA VILLAGE  
CONDOMINIUM ASSOCIATION, INC., a Florida  
non-profit Corporation

By: Dana A. Chase  
Dana A. Chase, Manager

STATE OF MASS  
COUNTY OF ESSEX

I HEREBY CERTIFY that on this day personally appeared before me an officer duly authorized to take acknowledgments, Dana A. Chase, as Manager of the BLACKBURN POINT MARIAN VILLAGE CONDOMINIUM ASSOCIATION, INC., a non-profit Florida Corporation, who is [ ] personally known to me or [ ] who has produced None as identification.

WITNESS my hand and official seal in the County and State this 18 day of August, 2005.



Print Name: Paul Venturoly  
Notary Public  
My Commission Expires: 8/7/09

MORTGAGEE'S CONSENT

Gold Bank is the Mortgagee holding a mortgage interest in the property being submitted to Condominium ownership as Blackburn Point Marina Village, a Condominium, as set forth in this Declaration of Condominium of Blackburn Point Marina Village, a Condominium. Gold Bank hereby consents to the submission of the Property described herein to the Condominium.

WITNESSES:

L. Lee Thiele  
Print Name: L. Lee Thiele  
Deane M. Kavel  
Print Name: Deane M. Kavel

GOLD BANK  
By: [Signature]  
Mark Staib, Vice President

STATE OF FLORIDA  
COUNTY OF Manatee

I HEREBY CERTIFY that on this day personally appeared before me an officer duly authorized to take acknowledgments, Mark Staib, as Vice President of GOLD BANK, who is  personally known to me or  who has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State this 12 day of August, 2005.

L. Lee Thiele  
Print Name: L. Lee Thiele  
Notary Public  
My Commission Expires: 3-22-09



Exhibits to Declaration

- Exhibit "A"      Condominium Plat
- Exhibit "B"      Articles of the Association
- Exhibit "C"      Bylaws of the Association
- Exhibit "D"      Legal Description of the Lands

F:\USERS\AKPACTIVE\BLACKBRNAMEND\DECLARJA.WPD



# BLACKBURN POINT MARINA VILLAGE

A CONDOMINIUM  
SECTION 13, TOWNSHIP 36S, RANGE 18E,  
SARASOTA COUNTY, FLORIDA



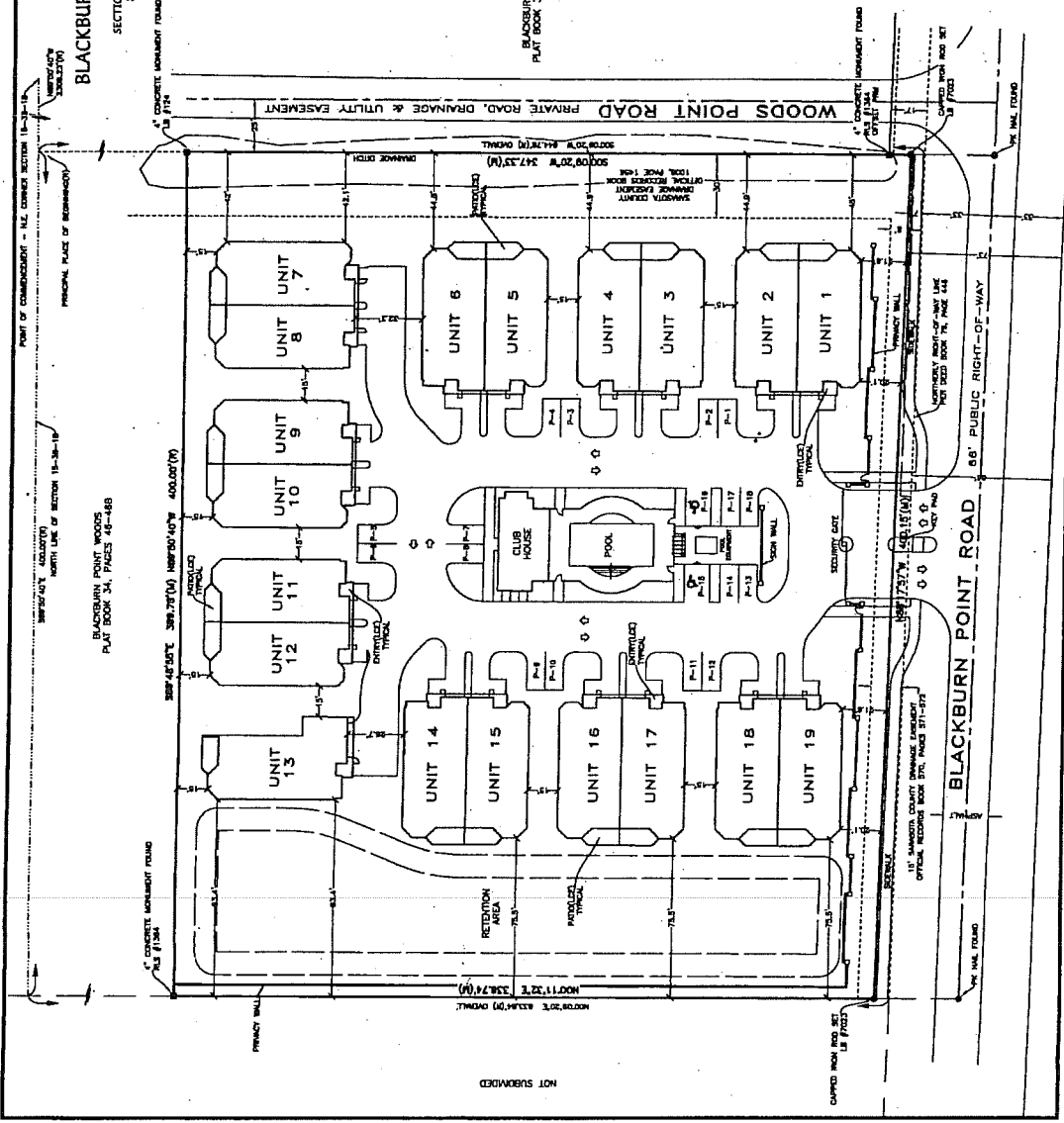
**NOTES**  
BUILDING TIES ARE MEASURED TO  
OUTSIDE OF BUILDINGS.  
ALL SITE IMPROVEMENTS ARE PROPOSED.

BLACKBURN POINT WOODS  
PLAT BOOK 34, PAGES 48-148

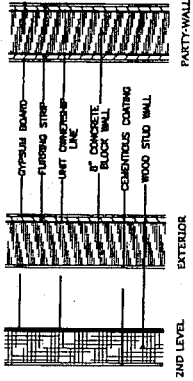
- LEGEND**
- (M) = MEASURED
  - (R) = RECORDED
  - (LCE) = LIMITED COMMON ELEMENT

## SITE PLAN & BOUNDARY SURVEY

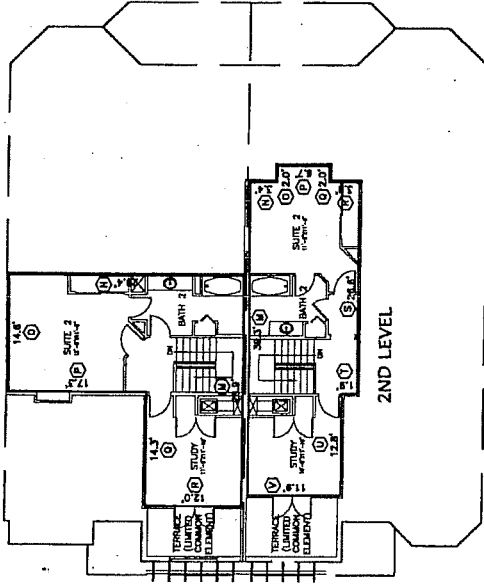
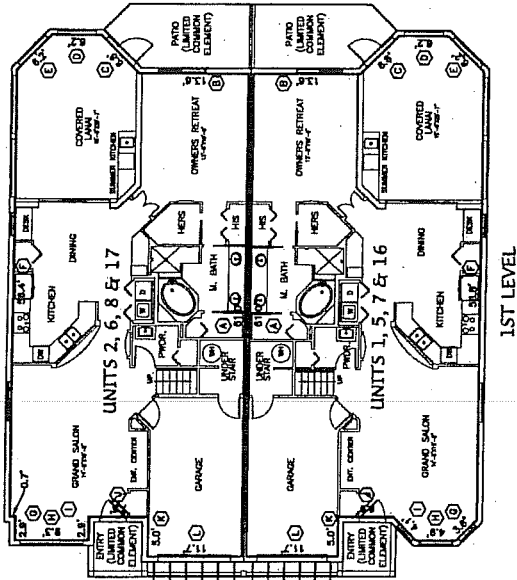
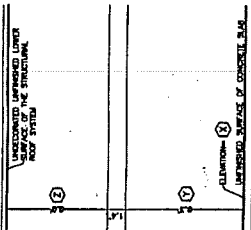
Mark S. Bennett  
Land Surveyor  
1100 1st Street, Sarasota, FL 34236  
Tel: 941-552-1111



NOT SUBMITTED



**UPPER & LOWER BOUNDARIES**



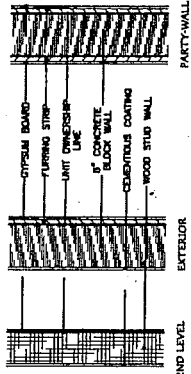
**PERIMETRICAL BOUNDARIES**

NOTES: THE UNFINISHED INTERIOR ROOMS TAKE THEIR FROM ARCHITECTURAL PLANS AND ARE NOT MEAN FIELD VENTURE.  
 FLOOR PLAN DIMENSIONS ARE PROVIDED - SEE CHART FOR AS-BUILT DIMENSIONS & ELEVATIONS.

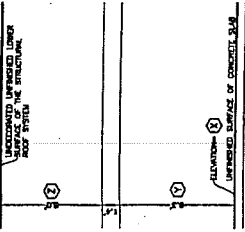
**AS-BUILT MEASUREMENTS**

Unit /	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	
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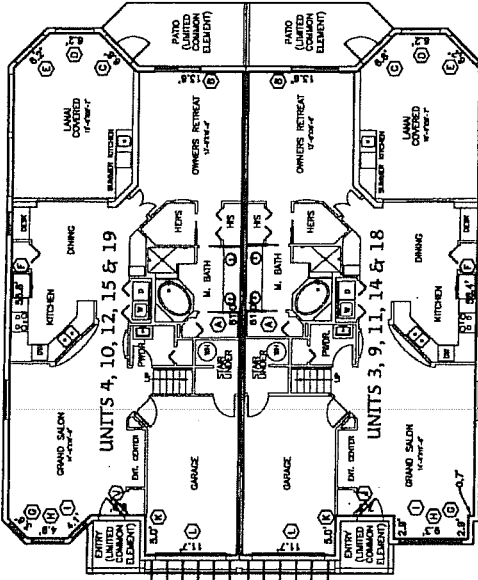
CONDOMINIUM BOOK PAGE  
 SHEET 4 of 5  
**BLACKBURN POINT MARINA VILLAGE**  
 A CONDOMINIUM  
 SECTION 15, TOWNSHIP 34S, RANGE 18E,  
 SARASOTA COUNTY, FLORIDA



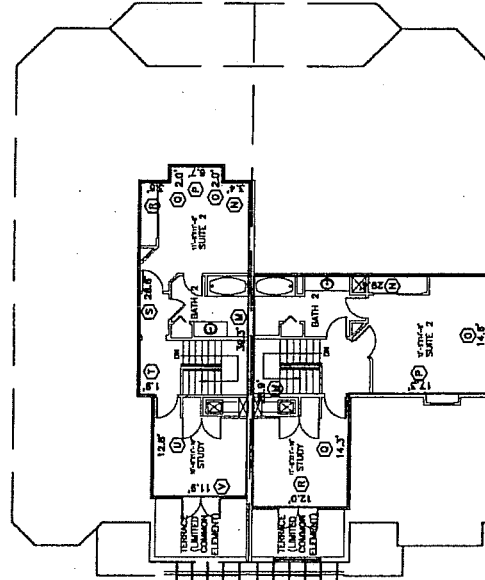
WALL DETAILS



UPPER & LOWER BOUNDARIES



1ST LEVEL



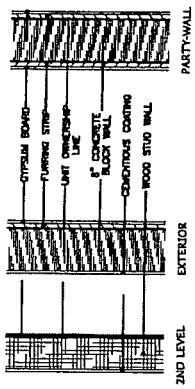
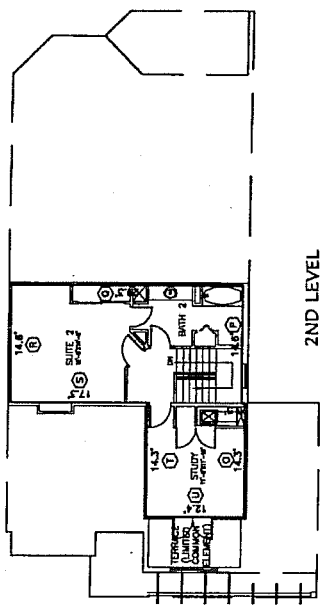
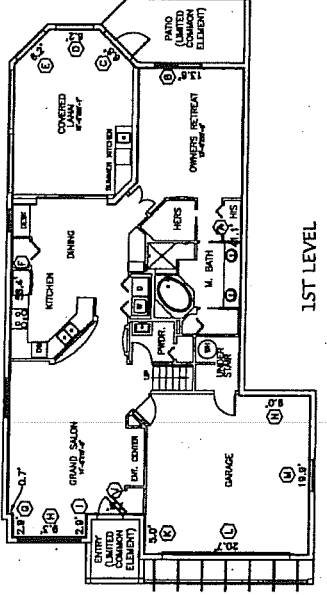
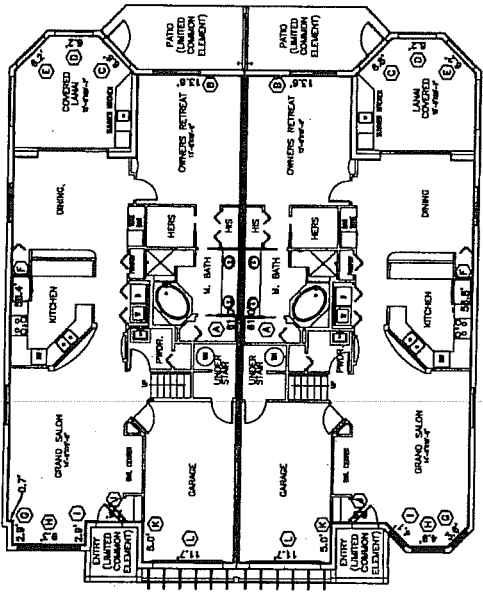
2ND LEVEL

NOTES:  
 1. UNREINFORCED IMPROVED TOP OF SURFACE OF THE STRUCTURE, FINISH AND HAVE NOT BEEN FIELD VERIFIED.  
 2. FLOOR PLAN DIMENSIONS ARE PROVIDED. SEE OWNER FOR AS-BUILT DIMENSIONS & ELEVATIONS.

AS-BUILT MEASUREMENTS

UNIT #	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
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4																										
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15																										
18																										
19																										

CONDOMINIUM BOOK PAGE  
 UNIT 5 OF 5  
**BLACKBURN POINT MARINA VILLAGE**  
 A CONDOMINIUM  
 SECTION 13, TOWNSHIP 30 NORTH, RANGE 18E  
 SARASOTA COUNTY, FLORIDA



UPPER & LOWER BOUNDARIES

PERIMETRICAL BOUNDARIES - UNIT 13

NOTE: THE DIMENSIONS INDICATED HEREIN ARE FROM ARCHITECTURAL PLANS AND HAVE NOT BEEN FIELD VERIFIED.  
 FLOOR PLAN DIMENSIONS ARE PROVIDED - SEE CHART FOR AS-BUILT DIMENSIONS & ELEVATION.

AS-BUILT MEASUREMENTS

Unit #	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
13																										

James S. Russell  
 Land Surveying & Mapping, Inc.  
 1000 1st St. SW, Suite 300  
 Tallahassee, FL 32302  
 Phone: (904) 879-9999

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of BLACKBURN POINT MARINA VILLAGE CONDOMINIUM ASSOCIATION, INC., a Florida corporation, filed on August 12, 2005, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H05000193853. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N05000008317.

Authentication Code: 705A00051995-081505-N05000008317-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Fifteenth day of August, 2005



*Glenda E. Hood*  
Glenda E. Hood  
Secretary of State

EXHIBIT

"B"



**ARTICLES OF INCORPORATION OF  
BLACKBURN POINT MARINA VILLAGE CONDOMINIUM ASSOCIATION, INC.**  
a corporation not for profit  
under the laws of the State of Florida

---

The undersigned hereby associate themselves for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, and agree as certify as follows:

ARTICLE 1.

Association Name, Principal Office, Address  
and Registered Agent Identity

1.1) Name. The name of the corporation shall be BLACKBURN POINT MARINA VILLAGE CONDOMINIUM ASSOCIATION, INC., a not for profit corporation. (The corporation shall be referred to in these Articles as the "Association".) The street address and mailing address of the initial principal office of the Association shall be 2033 Main Street, Suite 600, Sarasota, Florida 34237.

1.2) Address and Registered Agent. The street address of the initial registered office of the Association is 2033 Main Street, Suite 600, Sarasota, Florida 34237. The name of the Association's initial registered agent at such address is John D. Oliver.

ARTICLE 2.

Purpose

2.1) Purpose. The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (Chapter 718, Florida Statutes) as it exists on the date hereof (i) for the maintenance, operation and management of a condominium known as BLACKBURN POINT MARINA VILLAGE, A CONDOMINIUM (herein "Blackburn Point Marina Village"), being a proposed condominium development located in the unincorporated portion of Sarasota County, Florida. Blackburn Point Marina Village is being developed by Blackburn Point Marina Village, LLC, a Florida limited liability company, its successors and assigns (herein the "Developer").

2.2) Distribution of Income. The Association shall make no distribution of income to and no dividend shall be paid to its members, directors, or officers.

2.3) No Shares of Stock. The Association shall not have or issue shares of stock.

2.4) Use of Certain Terms. Blackburn Point Marina Village is sometimes referred to herein as the "Condominium". A Condominium Unit in the Condominium is sometimes hereinafter

referred to as a "Unit," and the owner of a Unit is sometimes hereinafter referred to as an "Owner" or a "Unit Owner". The property of the Condominium is sometimes referred to as "Condominium Property."

### ARTICLE 3.

#### Powers

3.1) Common Law and Statutory Powers. The Association shall have all of the common-law and statutory powers of a corporation not for profit under Florida law not in conflict with the terms of these Articles of Incorporation or the Florida Condominium Act.

3.2) Specific Powers. The Association shall have all of the powers and duties of an association set forth in the Florida Condominium Act and all of the powers and duties reasonably necessary to manage, maintain and operate Blackburn Point Marina Village pursuant to the Declaration of Condominium for Blackburn Point Marina Village as it may be amended from time to time, including but not limited to the following:

(a) To make and collect assessments (regular, special and emergency) against members as Unit Owners to defray the costs, expenses and losses incurred in the management, maintenance, operation, repair and replacement of the Condominium and property and facilities serving the Condominium and Association Property, if any.

(b) To use the proceeds of assessments in the exercise of its powers and duties.

(c) If provided in the Declaration of Condominium or the rules and regulations for the Condominium, to charge interest and late charges on delinquent or past due assessments and to accelerate the assessments of a Unit Owner in such Condominium delinquent in payment of any installment of assessments for Common Expenses.

(d) If provided in the Declaration of Condominium for the Condominium, to charge a use fee against Unit Owners in such Condominium for the use of designated Association Property, if any, or certain designated portions of the Common Elements.

(e) If provided in the Declaration of Condominium for the Condominium, to require as a condition to the letting or renting of a Unit in such Condominium a security deposit to protect against damages to the Common Elements and/or the Association Property, if any.

(f) To acquire, own, maintain, manage, repair, replace and operate the Condominium Property and all other property, improvements and facilities serving the Condominium or their respective Unit Owner members, whether located within or without the Condominium, including the maintenance, repair and replacement of the surface water management system as permitted by the Southwest Florida Water Management District and by Sarasota County,

Florida including all lakes, retention areas, water management areas, ditches, culverts, structures and related appurtenances serving the Condominium and the Association Property, if any.

(g) To purchase insurance upon the Condominium Property and Association Property, if any, and insurance for the protection of the Association and its members as Unit Owners.

(h) To assist in the rentals of Units and the residence thereon for the convenience of the Unit Owners, unless otherwise prohibited by law or unless registration is required by law.

(i) To make and amend reasonable Rules and Regulations respecting the use and occupancy of the Condominium Property, including the Units and the residences thereon and Association Property, if any, for the health, comfort, safety and welfare of the Unit Owners. All such Rules and Regulations and amendments thereto shall be approved by the Board of Directors of the Association.

(j) To approve or disapprove the transfer, lease, loan, mortgage and ownership of Units in the Condominium, if so provided in the Declaration of Condominium for such Condominium.

(k) To enforce by legal means the provisions of the Condominium Act of the State of Florida, the Declaration of Condominium of the Condominium, these Articles of Incorporation, the Bylaws of the Association and the Rules and Regulations for use of the Condominium Property and Association Property, if any.

(l) To contract for the management of the Condominium with third party contractors and to delegate to such contractor all powers and duties of the Association, except as such are specifically required by the Declaration of Condominium or the Florida Condominium Act to have the approval of the Board of Directors or the members of the Association.

(m) To contract for the management or operation of all the portions of the Common Elements and Association Property, if any, susceptible to separate management or operation.

(n) To employ personnel to perform the services required for proper management, maintenance and operation of the Condominium and Association Property, if any.

(o) To acquire or enter into (prior or subsequent to the recording of the Declaration of Condominium of the Condominium) agreements whereby it acquires leaseholds, memberships or other possessory or use interests in real and personal property, including, but not limited to, country clubs, golf courses, marinas, and other recreational facilities, whether or not contiguous to the lands of the Condominium, intended to provide for the enjoyment, recreation or other use or benefit of the Unit Owners, to declare expenses in connection therewith to be Common

Expenses, and to adopt covenants and restrictions relating to the use thereof and to operate under a fictitious name.

(p) To purchase and own Units in the Condominium, and to acquire and hold, lease, mortgage and convey the same, subject however, to the provisions of the Declaration of Condominium and the Bylaws of the Association relative thereto.

(q) To obtain loans to provide funds for operating, maintaining, repairing, replacing and improving the respective Condominium and Association Property, if any, and to pledge the income of the Association from assessments against Unit Owners in the Condominium as security for such loans.

3.3) Assets Held in Trust. All funds and properties acquired by the Association and the proceeds thereof shall be held in trust for the members in accordance with the provisions of the Declaration of Condominium of the Condominium, these Articles of Incorporation and the Bylaws of the Association.

3.4) Limitation on Exercise of Powers. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration of Condominium of the Condominium and the Bylaws of the Association and the Florida Condominium Act.

ARTICLE 4.

Members

4.1) Members.

(a) The members of the Association shall consist of all of the record owners of Units in the Condominium from time to time, and after termination of the Condominium, shall consist of those who are members at the time of such termination and their successors and assigns.

(b) Until the Declaration of Condominium of Blackburn Point Marina Village is recorded in the Public Records of Sarasota County, Florida, the subscriber(s) to these Articles shall be the sole member(s) of the Association and shall cast all the votes. Upon the recording of the Declaration of Condominium for Blackburn Point Marina Village, the subscriber(s) shall automatically cease to be member(s) of the Association.

4.2) Termination and Change of Membership. Membership in the Association shall terminate automatically and immediately as a member's vested present interest in the title to a Condominium Unit terminates. After receiving any approval of the Association required by the Declaration of Condominium of the Condominium, change of membership in the Association shall be established by the recording in the Public Records of Sarasota County, Florida, of a deed or other instrument establishing a change of record title to a Unit in the Condominium and the delivery to the

Association of a certified copy of such instrument. The Unit Owner(s) designated by such instrument thereby automatically becomes a member of the Association and the membership of the prior Unit Owner(s) is terminated.

4.3) Limitation on Transfer of Shares of Assets. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to the member's Unit.

4.4) Voting. Each member shall be entitled to one (1) vote (one Voting Interest) which shall be cast by the applicable Unit Owner as a member of the Association. If, after the recording of a Declaration, two or more units are combined to form a single unit ("Combined Unit"), then the Combined Unit shall have the number of votes equal to the sum of the votes for each of the Units so combined. There shall be one (1) Voting Interest for each Unit in Blackburn Point Marina Village. Provided, however, there shall be a maximum total of nineteen (19) votes (Voting Interests) in the Association. The manner of exercising voting rights shall be determined by the Bylaws of the Association.

#### ARTICLE 5.

##### Directors

5.1) Developer's Right to Control Association and Board of Directors. The Developer, during the development and sales period of the Condominium, shall have and hereby reserves the absolute right and authority to manage and control the Association and its affairs and decisions and the exclusive right to elect or appoint all Directors of the Association (who need not be Unit Owners), subject, however, to the following formula which shall govern the transfer of control from the Developer to Unit Owners other than the Developer:

(a) When Unit Owners other than the Developer own fifteen percent (15%) or more of the total Units in the Condominium, such Unit Owners shall be entitled to elect no less than one-third (1/3) of the members of the Board of Directors of the Association.

(b) Unit Owners other than the Developer shall be entitled to elect not less than a majority of the Board of Directors of the Association at such time as the earliest of the following shall occur:

(i) Three (3) years after fifty percent (50%) of the total Units of the Condominium have been conveyed to purchasers, or

(ii) Three (3) months after ninety percent (90%) of the total Units in the Condominium have been conveyed to purchasers, or

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(iii) When all the total Units in the Condominium have been completed, some of them have been conveyed to purchasers and none of the others are being offered for sale by the Developer in the ordinary course of business, or

(iv) When some of the total Units in the Condominium have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, or

(v) Seven (7) years after recordation of the Declaration of Condominium for Blackburn Point Marina Village.

(c) The Developer shall be entitled to elect at least one (1) member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the total Units in the Condominium.

(d) The transfer of the control of the Association in accordance with the foregoing provisions shall take place pursuant to and in accordance with the Florida Condominium Act.

During the period the Developer is in control of the Association, the Directors shall exercise all rights, powers and privileges that would otherwise be exercisable by the members. The Developer may, at its option, at any time in writing waive its right to control the Association and turn over control to the owners of the applicable Units, who must then accept such turnover.

Notwithstanding anything hereinbefore or hereinafter contained or implied to the contrary, the Developer hereby reserves unto itself, its successors, designees, and assigns, pursuant to the provisions of Article 5.1 hereof, the exclusive right to elect, to remove and to replace from time to time members of the first Board of Directors of the Association.

Notwithstanding the foregoing, the Developer, while exercising control of the Association during the development and sales period for the Condominium, shall observe all the formalities of the Association's corporate structure and regime and the requirements of the Florida Condominium Act and the rules of the Division of Florida Land Sales, Condominiums and Mobile Homes.

5.2) Board of Directors. The affairs of the Association shall be managed by the Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors. Directors, except those persons named as the members of the First Board of Directors and those persons designated by the Developer, if any, to replace such persons, shall be members of or officers of corporate members of the Association.

5.3) Election of Directors. The Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the Bylaws of the Association. Directors may

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be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws of the Association.

5.4) First Election of Directors. The first election of Directors by the membership shall occur as provided in Article 5.1 hereof. The First Board of Directors named in these Articles shall serve until such election and any vacancies in their number occurring before the first election shall be filled by the Developer, or in the event of its failure to do so, by the remaining Directors, except as otherwise specifically provided in Article 5.1 hereof. The transfer of control of the Association by the Developer to the members shall be as provided in Article 5.1 hereof.

5.5) First Board of Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Dana Chase	117 Liberty Street, Unit 1 Danvers, MA 01923
Paul Danehy	117 Liberty Street, Unit 1 Danvers, MA 01923
David Levine	117 Liberty Street, Unit 1 Danvers, MA 01923

#### ARTICLE 6. Officers

6.1) Officers. The affairs of the Association shall be administered by a President, Vice-President, Secretary, Assistant Secretary and Treasurer and such other offices as may be designated in the Bylaws of the Association. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated and elected by the Board of Directors as follows:

<u>NAME</u>	<u>OFFICE</u>	<u>ADDRESS</u>
Dana Chase	President	117 Liberty Street, Unit 1 Danvers, MA 01923

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Paul Danehy	Vice President	117 Liberty Street, Unit 1 Danvers, MA 01923
David Levine	Secretary Treasurer	117 Liberty Street, Unit 1 Danvers, MA 01923

The Directors and Officers may lawfully and properly exercise the powers set forth in Article 3 (including those set forth in Section 3.2(l), (m), (n), (o) and (p)), notwithstanding the fact that some or all of them may be directly or indirectly involved in the exercise of such powers and in the negotiation and/or consummation of agreements executed pursuant to such powers are some or all of the persons with whom the Association enters into such agreements or who own some or all of the proprietary interests in the entity or entities with whom the Association enters into such agreements. Disclosure of such agreements in the Declaration of Condominium for the Condominium, as initially declared or subsequently amended, shall stand as an absolute confirmation of such agreements and the valid exercise by the Directors and Officers of this Association of the powers pertinent thereto.

#### ARTICLE 7.

##### Indemnification of Directors and Officers

7.1) Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceedings, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director, employee, officer or agent of the Association, against all liabilities and expenses (including attorneys' fees, costs and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceedings, unless (a) a court of competent jurisdiction determined, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he or she did not act in good faith, nor in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceedings by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

A Director, other than a person appointed by the Developer to the Board, shall not be personally liable for monetary damages to the Association or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, unless subsection (1)(a),

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(1)(b)1., (1)(b)2., (1)(b)3., (1)(b)4., or (1)(b)5. of Section 607.0831, Florida Statutes, shall be found applicable.

7.2) Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Article 7.1 above, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

7.3) Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceedings upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as authorized in this Article 7.

7.4) Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

7.5) Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

7.6) Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article 7 may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

## ARTICLE 8.

### Bylaws

8.1) Bylaws. The Bylaws of the Association shall be adopted by the Board of Directors of the Association and may be altered, amended or rescinded in certain instances by the Board of Directors and in certain instances by the membership in the manner provided by the Bylaws.

ARTICLE 9.  
Amendments

9.1) Amendments. Subject to the provisions of Sections 9.2 and 9.3 of this Article 9, amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

(b) A resolution for the adoption of a proposed amendment shall be adopted by the Board of Directors setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members of the Association. Except as elsewhere provided, such approvals must be by not less than two-thirds (2/3) of the entire membership of the Board of Directors and by not less than two-thirds (2/3) of the votes (Voting Interests) of the entire membership. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting.

(c) A copy of each amendment filing shall be certified by the Secretary of State and shall be recorded in the Public Records of Sarasota County, Florida, with identification on the first page thereof of the Book and Page of the Public Records where the Declaration of Condominium is recorded.

9.2) Limitation on Amendments. No amendment shall make any changes in the qualifications for membership nor the voting rights of members, nor make any change in Section 3.2 of Article 3, in Sections 5.1, 5.4 and 5.5 of Article 5 or in Article 7, without approval in writing by the Developer, all members and the joinder of all record owners of mortgages upon all or any portion of the Condominium. No amendment shall be made that is in conflict with the Florida Condominium Act, the Declaration of Condominium or which deletes or modifies any of the rights of the Developer hereunder without the prior written consent of the Developer.

9.3) Initial Amendments May be Made Only by First Board of Directors. Notwithstanding anything herein contained to the contrary, until the first election of directors by the members, amendments to these Articles of Incorporation may be proposed and adopted only by the unanimous action of the First Board of Directors named in these Articles or their replacements.

ARTICLE 10.

Term

10.1) Term. The term of the Association shall be perpetual, unless the Condominium is terminated pursuant to the provisions of the Declaration, and, in the event of such termination, the Association shall be dissolved in accordance with the law unless its members shall unanimously

determine otherwise. Upon such dissolution, the Property consisting of the surface water management system shall be conveyed to an appropriate agency of Sarasota County, Florida, and if not accepted for such conveyance, then such surface water management system shall be dedicated to a similar non-profit corporation.

#### ARTICLE 11.

##### Restriction Upon Commencement of Litigation

11.1) Restriction. Notwithstanding anything contained herein, or within the Bylaws of this Association to the contrary, the Association shall be required to obtain the approval of at least sixty-seven percent (67%) of all Voting Interests in the Condominium prior to the employment of and payment of legal or other fees to persons or entities engaged by the Association for the purposes of suing or making, preparing, or investigating any lawsuit or commencing any lawsuit, other than for the following purposes:

(a) The collection of assessments against members as Unit Owners including the preparation and filing of liens for unpaid assessments and the foreclosure of such liens;

(b) The collection of other charges and fees which Unit Owners are obligated to pay pursuant to the Declaration of Condominium of the Condominium, these Articles, and/or the Bylaws and/or Rule and Regulations of this Association;

(c) The enforcement of the use and occupancy and other restrictions contained within the Declaration of Condominium, other condominium documents, including but not limited to the Rules and Regulations, including but not limited to those respecting tenants and guests;

(d) An emergency where awaiting to obtain the approval of the required number of Unit Owners would create a substantial risk of irreparable injury to the Association, the Condominium, and/or the Association Property, if any, or any portion thereof.

Any such approval shall be obtained at a meeting duly called and the notice for which shall specifically state its purpose.

#### ARTICLE 12.

##### Definitions

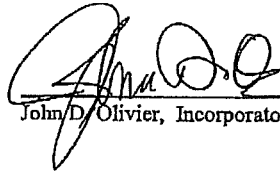
12.1) Definitions. The terms used in these Articles shall have the same definitions and meaning as set forth in the Declaration of Condominium for Blackburn Point Marina Village unless herein provided to the contrary or unless the context otherwise requires.

ARTICLE 13.  
Subscribers (Incorporators)

13.1) Names and Addresses. The name and residence address of the subscriber (incorporator) of these Articles of Incorporation is as follows:

<u>NAME</u>	<u>ADDRESS</u>
John D. Olivier	2033 Main Street - Suite 600 Sarasota, Florida 34237

IN WITNESS WHEREOF, the subscriber (incorporator) has hereto affixed his signature of this 11<sup>th</sup> day of August, 2005.

  
\_\_\_\_\_  
John D. Olivier, Incorporator

STATE OF FLORIDA  
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of August, 2005, by John D. Olivier,  who is personally known to me; or [ ] has produced \_\_\_\_\_ as identification and did not take an oath.

  
\_\_\_\_\_  
Notary Public Signature

Name of Acknowledged Printed or Stamped  
My Commission Expires:



Diane Drake Smith  
My Commission DD143725  
Expires September 29, 2005

**CERTIFICATE DESIGNATING PLACE OF BUSINESS FOR SERVICE  
OF PROCESS WITHIN THIS STATE AND NAMING AGENT UPON WHOM  
PROCESS MAY BE SERVED**


In pursuance of Chapter 48.091 and 617.0501, Florida Statutes, the following is submitted in compliance with said Act:

That Blackburn Point Marina Village Condominium Association, Inc., desiring to organize under the laws of the State of Florida, with its principal offices at 2033 Main Street, Suite 600, Sarasota, FL 34237, has named John D. Olivier, whose office is located at 2033 Main Street, Suite 600, Sarasota, Florida, 34237, as its agent to accept service of process within the State.

ACKNOWLEDGEMENT

Having been named as registered agent to accept service of process for the above-stated corporation, at the place designated in this certificate, I agree to act in this capacity and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

Dated: August 11, 2005.

  
\_\_\_\_\_  
John D. Olivier

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## BYLAWS

### OF

#### BLACKBURN POINT MARINA VILLAGE CONDOMINIUM ASSOCIATION, INC.

a corporation not for profit  
under the laws of the State of Florida

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1. Identity. These are the Bylaws of Blackburn Point Marina Village Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida (herein called the "Association"), the Articles of Incorporation of which were filed in the office of the Secretary of State of the State of Florida on August 12, 2005. The Association has been organized pursuant to the Florida Statutes for the purpose of administering maintaining, repairing, replacing, operating and managing Blackburn Point Marina Village, a Condominium (herein "Blackburn Point Marina Village") being a condominium project located in the City of Sarasota, Florida, as described in Article 2.1 of the Articles of Incorporation.

1.1. The initial principal office of the Association shall be at 2033 Main Street, Suite 600, Sarasota, Florida 34237.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the corporation shall bear the name of the corporation, the word "Florida", the words "Corporation not for profit" and the year of incorporation, an impression of which is as follows:

1.4. Use of Certain Terms. Blackburn Point Marina Village is sometimes referred to herein as the "Condominium". A condominium unit in the Condominium is sometimes hereinafter referred to as a "Unit," and the owner of a Unit is sometimes hereinafter referred to as an "Owner" or a "Unit Owner". The condominium property of the Condominium is sometimes referred to as "Condominium Property."

1.5. Capitalized terms used herein shall have the same meaning as set forth in the Articles of Incorporation and in the Declaration of Condominium for Blackburn Point Marina Village.

#### 2. Members' Meetings.

2.1. The Annual Members' Meeting shall be held on a date and at a time determined by the Board of Directors of the Association at the office of the Association each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the members; provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the next day that is not a holiday. The members shall meet at least once in each calendar year.

2.2. Special Members' Meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from members entitled to cast one-third (1/3rd) of the votes (Voting Interests) of the entire membership of the Condominium. A special meeting of the members may be called by written petition (application) by at least ten percent (10%) of the votes (Voting Interests) giving notice of the meeting as required for a meeting of the members, which notice must state the purpose of the meeting is to recall a member(s) of the Board pursuant to Section 718.112(2)(j), Florida Statutes (Fla. Stat.), and Rule 61B-23.0027, Florida Administrative Code (F.A.C.) or to consider and enact a budget pursuant to Section 718.112(2)(e), Fla. Stat., when the adopted budget by the Board exceeds 115% of Assessments for the preceding year.

2.3. Notice of all members' meetings stating the time and place and including the agenda for which the meeting is called shall be given by the President or Vice President or Secretary



unless waived in writing. Such notice shall be in writing and sent to each member at his address as it appears on the books of the Association. The notice of all members' meetings shall be delivered or mailed not less than fourteen (14) days nor more than sixty (60) days prior to the date of the meeting. Notice of the annual meeting shall be given at least fourteen (14) days prior to the annual meeting. An officer of the Association shall execute an affidavit affirming that notices of the members' meeting were mailed or hand delivered to each Unit Owner in accordance with the Florida Condominium Act. This affidavit shall be included in the official records of the Association. In addition, a notice of the annual and each meeting of the membership shall be posted at a conspicuous place on the Condominium or Association Property, if any, at least fourteen (14) continuous days preceding the annual and each meeting of the members. Proof of posting shall be given by Affidavit. The notice of the annual meeting of the members must be sent either by hand delivery or by mail to each Unit Owner unless the particular Unit Owner has waived in writing the right to receive the notice of the annual meeting by mail or hand delivery. Upon notice to the members, the Board shall by duly adopted rule, designate a specific location on the Condominium, Association Property, if any, or other property upon which all notice of Unit Owner meetings shall be posted. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address which the Developer initially identified for that purpose and thereafter as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or the Owners of the Unit do not agree, to the address provided on the deed of record for the Unit.

2.4. The record date on which members who were entitled to notice of a meeting are determined is three (3) days prior to the date the first notice are mailed or hand delivered.

2.5. Unless a lower number or no requirement of quorum is provided within these Bylaws, a quorum at members' meetings shall consist of a majority of the Voting Interests in the Condominium present in person or by proxy, if allowed by the Florida Condominium Act. All decisions at a members' meeting shall be made by a majority of the Voting Interests represented at a meeting at which a quorum is present, except when approval by a lesser or greater percentage of Voting Interests is required by the applicable Declaration of Condominium, the Articles of Incorporation or these Bylaws.

2.6. Voting.

a. In any meeting of members, voting shall be as described in Article 4.4 of the Articles of Incorporation.

b. If a Unit is owned by one person, his or her right to vote shall be established by the record title to his or her Unit. If a Unit is owned by more than one person, the person entitled to cast the vote for the Unit (who shall be one of the record Owners) shall be designated by a certificate signed by all of the record Owners of the Unit and filed with the Secretary of the Association at or prior to the meeting. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit (who shall be one of the current officers or Directors of the corporation) shall be designated by a certificate signed by the President or Vice President and attested by the Secretary of the corporation and filed with the Secretary of the Association at or prior to the meeting. Such certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote of a Unit may be revoked by any Owner of a Unit. If such a certificate is not on file, the vote of such Owners shall not be considered in determining whether a quorum is present or for any other purpose.

c. The Association shall retain proof of all Voting Interests in attendance, either in person or by proxy, all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by Unit Owners for a period of one (1) year from the date of the election, vote, or meeting to which the document relates at the Association office. Such proof shall include the date of the meeting and the signatures reflecting all Voting Interests present in person or by proxy. A Unit Owner shall not be denied the right to vote based on failure to have paid delinquent assessments.

2.7. Proxies. Except as specifically otherwise provided herein, Unit Owners may not vote by general proxy, but may vote by limited proxies substantially conforming to the limited proxy form adopted by the Division of Florida Land Sales, Condominium, and Mobile Homes. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with Section 718.112(2)(f)2., Fla. Stat.; for votes taken to waive financial statement requirements as provided by Section 718.111(13), Fla. Stat.; for votes taken to amend the Declaration pursuant to Section 718.110, Fla. Stat.; for votes taken to amend the Articles of Incorporation or these Bylaws pursuant to the provisions herein; and for any other matter for which Chapter 718, Fla. Stat., requires or permits a vote of the Unit Owners. No proxy, limited or general, shall be used in the election of members to the Board. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for non-substantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions hereof, Unit Owners may vote in person at Unit Owner meetings. Each proxy shall specifically set forth the name of the person voting by proxy and the name of the person or persons authorized to vote the proxy for him. Each proxy shall contain the date, time and place of the meeting for which the proxy is given and, if a limited proxy, set forth those items on which the holder of the proxy may vote and the manner in which the vote is to be cast. Each proxy may provide for the substitution of the person authorized. Every proxy shall be revocable at any time at the pleasure of the Unit Owner executing it. A proxy shall be valid only for the specific meeting for which it was originally given and any lawful adjournments thereof, provided such adjourned meetings occur within 90 days of the original meeting.

2.8. Adjourned meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by valid proxy may adjourn the meeting from time to time until a quorum is present.

2.9. The order of business at annual members' meetings, and as far as practical at other members' meetings, shall be:

- a. Collection of election ballots
- b. Election of chairman of the meeting
- c. Roll call; proxies and/or election ballots certification
- d.. Proof of notice of meeting or waiver of notice
- e. Reading and disposal of any unapproved minutes
- f. Reports of officers
- g. Reports of committees
- h. Election of inspectors of election
- i. Election of Directors
- j. Unfinished business
- k. New business
- l. Adjournment

2.10. Waiver of Notice. The members may waive notice of any specific members' meeting in writing or orally before or after any meeting. The members may also act by written agreement without meeting.



2.11. Proviso. PROVIDED, however, that while the Developer of the Condominium holds Units for sale in the ordinary course of business no action defined within Section 718.301(3)(a)(b) shall be taken without approval in writing from the Developer.

2.12. Minutes. Minutes of each annual and any special members' meeting shall be kept in a businesslike manner by the Secretary of the Association and shall be available for inspection by Unit Owners and members of the Board of Directors at all reasonable times upon reasonable advance notice to the Secretary and pursuant to Paragraph 9 hereinbelow.

2.13. Unit Owner Meeting Participation. Unit Owners shall have the right to participate in meetings of Unit Owners with reference to all designated agenda items. Unit Owners do not have the right to speak with respect to items not specifically designated on the agenda; however, the Board may permit a Unit Owner to speak on such items. However, the Association may adopt reasonable rules in writing governing the frequency, duration, and manner of Unit Owner participation.

2.14. Tape Recording or Video Taping of Meetings. Any Unit Owner may tape record or video tape a meeting of the Unit Owners subject to such reasonable rules adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes, and such written rules as may be adopted in compliance therewith by the Board.

### 3. Directors.

3.1. Board of Directors. The affairs of the Association shall be managed by a Board of Directors or Board of Administration.

3.2. Membership. The Board of Directors shall consist of at least three (3) Directors.

3.3. Qualifications. All Directors (except for those Directors elected or appointed by the Developer pursuant to Article 5.1 of the Articles of Incorporation) shall be Unit Owners, co-owners or officers of corporate owners and be at least eighteen (18) years of age.

3.4. Election of Directors shall be conducted in the following manner

a. Election of Directors shall be held at the annual members' meeting.

b. Any Unit Owner desiring to be a candidate for Board membership shall comply with subparagraph c. immediately hereinbelow.

c. The members of the Board shall be elected by written ballot or voting machine. Proxies shall in no event be used in electing the Board, either in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, except a vote by limited proxy, either by Developer or Unit Owner to fill a Board vacancy caused by recall of such Board member elected or appointed by Developer or Unit Owners. Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery including regularly published newsletters, to each Unit Owner entitled to vote, a First Notice of the date of the election.

Any Unit Owner or other eligible person desiring to be a candidate for the Board must give written notice to the Association not less than forty (40) days before a scheduled election. Before the election, the Association shall mail or deliver a Second Notice of the election to all Unit Owners entitled to vote therein, together with a ballot which shall list all candidates and the written notice and agenda required in Section 718.112(2)(d)3, Florida Statutes. Upon request of a candidate, the Association shall include an information sheet, no larger than 8 ½ x 11 inches, which must be furnished by the candidate not less than thirty-five (35) days before the election, to be included with the mailing of the ballot, with the costs of mailing and copying to be borne by the Association. However, the Association has no liability for the contents of the information sheets prepared by the Candidates. The voting procedures at such meeting shall be such as are consistent with provisions

established within such rules adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes. Elections shall be decided by a plurality of all those ballots cast. There shall be no quorum requirement; however, at least twenty percent (20%) of the eligible voters in the Condominium must cast a ballot in order to have a valid election of members of the Board. No Unit Owner shall permit any other person to vote his ballot, and any such ballots improperly cast shall be deemed invalid. A Unit Owner who needs assistance in casting the ballot for the reason stated in Section 101.051, Fla. Stat., may obtain assistance in casting the ballot. Any Unit Owner violating this provision may be fined by the Association in accordance with Section 718.303, Fla. Stat. The regular election shall occur on the date of the annual meeting. Notwithstanding the foregoing, an election and balloting are not required unless more candidates file notices of intent to run or are nominated than vacancies exist on the Board.

d. Except as to vacancies provided by removal of Directors by members, vacancies on the Board of Directors occurring between annual meetings of members shall be filled by the Developer or Unit Owners, other than Developer, who, as the case may be, had previously elected or appointed that Board member.

e. Subject to the provisions of the Florida Condominium Act, any Director may be removed with or without cause by the vote or agreement in writing by a majority of all Voting Interests entitled to elect such Director. If a vacancy occurs on the Board as a result of a recall and less than a majority of the Board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining Directors, notwithstanding any provision to the contrary contained in Subparagraph (d)(3) of Subsection (2) of Section 718.112, Fla. Stat. If vacancies occur on the Board as a result of a recall and a majority or more of the Board members are removed, the vacancy shall be filled in accordance with such procedural rules as may have been adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes.

f. Until the Developer of the Condominium has terminated its control of the Association and the Condominium in accordance with the provisions of Article 5.1 of the Articles of Incorporation, the First Board of Directors of the Association shall serve. In the event of vacancies in the First Board of Directors, the Developer (or if it fails to do so, the remaining Directors) shall fill the vacancies, and if there are no remaining Directors, the vacancies shall be filled, by the Developer, except as may be otherwise specifically provided by the Florida Condominium Act. The transfer of control of the Association from the Developer to the members shall be as provided in the Articles of Incorporation.

3.5. The term of each Director's service shall extend until the next annual meeting of the members and subsequently until his successor is duly elected and qualified or until he is removed in the manner elsewhere provided.

3.6. The organization meeting of a newly-elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected.

3.7. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings (except for any such meeting at which the adoption of the annual budget is to be considered) shall be given to each Director, personally or by mail, fax, telephone or telegraph, at least three (3) days prior to the day of such meeting.

3.8. Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of one-third (1/3) of the Directors. Notice of special meetings (except for any such meeting at which the adoption of the annual budget is to be considered and except for an emergency) shall be given personally or by mail, fax, telephone or telegraph, at least three (3) days prior to the day named for such meeting, which notice shall state the time, place and purpose of the meeting.

3.9. Directors Meetings Open. Meetings of the Board of Directors at which a quorum of the members is present shall be open to all Unit Owners. Any Unit Owner may tape

record or videotape meetings of the Board of Directors. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. Such tape recording or videotaping of the meetings shall be governed by the applicable rules of the Division. The Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements.

3.10. Notice to Unit Owners. Notices of all meetings of the Board of Directors specifically identifying all agenda items shall be titled "To The Attention of All Unit Owners" and shall also be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours preceding the meeting, except in an emergency. Any item not included on a Notice may be taken upon an emergency basis by at least a majority plus one of the members of the Board. Such emergency action shall be noticed and ratified at the next regular meeting of the Board. Notice of any meeting in which regular Assessments against Units or Unit Owners are to be considered for any reason shall contain a statement that Assessments will be considered and the nature of any such assessments. Written notice of any meeting at which non-emergency Special Assessment, or at which amendment to rules regarding Unit use will be considered, shall be mailed or delivered to the Unit Owners and posted conspicuously on the Condominium Property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the person providing the notice and filed among the Official Records of the Association. Upon notice to the Unit Owners, the Board shall by duly adopted rule designate a specific location on the Condominium Property or Association Property, if any, upon which all notices of Board meetings shall be posted.

3.11. Meeting to Adopt Annual Budget. The members must be given written notice of the time and place of the meeting at which the Board of Directors will consider the annual budget. A copy of the notice of the meeting and the proposed annual budget of Common Expenses and proposed assessments must be mailed or hand delivered to the Unit Owner members not less than fourteen (14) days prior to such meeting. The meeting shall be open to the Unit Owners. An officer or manager of the Association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the Official Records of the Association.

3.12. Waiver of Notice. Any Director may waive the notice of a meeting to which he is entitled before or after the meeting and such waiver shall be deemed equivalent to the giving of notice to such Director.

3.13. Quorum. 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 of Directors, except when approval by a greater number of directors is required by the Condominium Act, the Declaration of Condominium, the Articles of Incorporation or these Bylaws. A Director who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless such Director votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest. No Director may vote by proxy or by secret ballot at a Board meeting except that Officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes of that meeting.

3.14. Adjourned meetings. If at any meeting of the Board of Directors there be 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 that might have been transacted at the meeting as originally called may be transacted provided adequate statutory notice has been posted in advance.

3.15. Written Agreement or Disagreement to Action Taken. Although a Director may submit his or her agreement or disagreement with any action taken at a meeting which he or she did not attend, such agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

3.16. The presiding officer of Directors' meetings shall be the Chairman of the Board if such an officer has been elected; and if none, the President shall preside. In the absence of the presiding officer the Directors present shall designate one of their members to preside.

3.17. The order of business at Directors' meetings shall be:

- a. Calling of Roll
- b. Proof of due notice of meeting
- c. Reading and disposal of any unapproved minutes
- d. Reports of officers and committees
- e. Election of officers
- f. Unfinished business
- g. New business
- h. Adjournment

3.18. Directors' compensation, if any, shall be determined by the members. No Director shall solicit, offer to accept, or accept anything or service of value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any Director who knowingly so solicits, offers to accept, or accepts anything or service of a value is subject to a civil penalty pursuant to Section 718.501(1)(d)4., Fla. Stat. However, this paragraph does not prohibit a Director from accepting services or items received in connection with trade fairs or education programs.

3.19. Committees. The Board of Directors by resolution adopted by a majority of the full Board may designate from among its members an executive committee, and one or more other committees, comprised either of Board members, Unit Owners, or Board members and Unit Owners appointed by the Board, or a member of the Board, to make recommendations to the Board regarding the Association budget or to take action on behalf of the Board, whose exercise of power shall be subject to the prior and subsequent approval of the Board of Directors. The Board of Directors may delegate to the executive committee such powers as it deems proper, except as prohibited by Fla. Stat., and the Board may designate one or more members as alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting of such committee.

3.20. Rules and Regulations. The Board of Directors may adopt, amend and rescind uniform Rules and Regulations to govern the operation and use of the Condominium, Association Property, if any, the Common Elements and all other real and personal property, improvements, streets and the recreational and other common facilities owned and/or operated by the Association for the use, benefit and enjoyment of its members or otherwise serving its members including, without limitations Rules and Regulations regulating, restricting, limiting or governing:

- a. The loaning, lending and/or temporary occupancy of Units;
- b. The use of the common areas and facilities of the Condominium and/or the Association Property, if any;
- c. The maintenance and keeping of pets within Units and/or about the units or the common areas and facilities of the Condominium and/or the Association Property, if any;
- d. Moves in and/or out of Units;

e. The use, appearance and/or change in the appearance of the exterior within Units including the terraces and other portions of Unit visible from the exterior of the Unit; Specifications for hurricane shutters shall include color, style, and other factors deemed relevant by the Board, which specifications shall comply with applicable Building Code. Notwithstanding any provision herein or within other of the Condominium documents to the contrary, where approval is required by the Condominium documents, the Board shall not refuse to approve the installation or replacement of hurricane shutters which conform to the Board's adopted specifications. The installation, replacement, and maintenance of such shutters in accordance herewith shall not be deemed a material alteration to the Common Elements within the provisions of Section 718.113(2), Fla. Stat.

f. The parking/storage of vehicles; speed limits and traffic;

g. The use of security, maintenance and janitorial personnel;

h. The use and conduct of workmen/decorators;

i. The resolution of disputes or disagreements between Unit Owners or between Unit Owners and the Association;

j. The imposition of fines for violation of the terms and provisions of the Declaration, the Articles of Incorporation, the Bylaws and/or the Rules and Regulations.

Provided, however at no time may any Rule or Regulation be adopted which would prejudice the rights reserved to the Developer.

The Rules and Regulations shall not conflict with the Declaration, Articles of Incorporation or these Bylaws. The Rules and Regulations referred to herein shall be in addition to those contained in the Declaration.

3.21. Response to Unit Owner Written Inquiry. When a Unit Owner files a written inquiry by certified mail with the Board, it shall respond to the Unit Owner within thirty (30) days of receipt of the inquiry. The Board shall give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the Division of Florida Land Sales, Condominiums and Mobile Homes. The failure to act within thirty (30) days and to notify the Unit Owner within thirty (30) days after the action taken precludes the Board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry.

#### 4. Powers and Duties of the Board of Directors.

4.1. All of the powers and duties of the Association existing under the Condominium Act, the Declaration of Condominium, Articles of Incorporation and these Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such is specifically required. The Association shall have all of the powers and duties set forth in the Condominium Act, except as limited by the Articles of Incorporation, the Declaration of Condominium and these Bylaws, and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as it may be amended from time to time, including but not limited to the powers as set forth in the Articles of Incorporation.

4.2. Any contract that is not to be fully performed within one (1) year after its making or any contract for the purchase, lease, or renting of materials or equipment to be used by the Association in accomplishing its purposes under Chapter 718 and any contract for the provision of services shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment or for the provision of services requiring payment by the Association on behalf of the Condominium in the aggregate that exceeds five percent (5%) of the total annual budget of the Association, including reserves, the Association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the Association to

accept the lowest bid. Notwithstanding the foregoing, contracts with employees of the Association which does not include managers hired by the Association licensed or required to be licensed pursuant to Section 468.431, Fla. Stat., and contracts for attorney, accountant, architect, engineer, and landscape architect services shall not be subject to the provisions hereof. A contract executed before January 1, 1992, and any renewal thereof, is not subject to the competitive bid requirements hereof. If a contract was awarded under the competitive bid procedure hereof, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the Board to cancel the contract on (30) days notice. Materials, equipment, or services provided to a Condominium under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements hereof. A contract with a manager, if made by a competitive bid, may be made for up to three (3) years. Nothing contained herein is intended to limit the ability of the Association to obtain needed products and services in an emergency. The provisions hereof shall not apply if the business entity with which the Association desires to enter into a contract is the only source of supply within the County serving the Association. However, nothing contained herein shall excuse a party contracting to provide maintenance or management services from compliance with Section 718.3025, Fla. Stat.

4.3. Since the Association has less than one hundred (100) Units that it manages and operates, the Unit Owners may opt-out of the provisions of this Section 4.2 hereof if two-thirds (2/3) of the Unit Owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth this exception from Section 718.3026, Fla. Stat.

## 5. Officers.

5.1. The executive officers of the Association shall be a President, who shall be a Director, a Vice President, who shall be a Director, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and shall serve at the pleasure of the Board of Directors. Any person may hold two or more offices, except that the President shall not be also the Secretary. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

5.2. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties usually vested in the office of President of an Association, including but not limited to the power to appoint committees from among the members from time to time, as he in his discretion may determine appropriate, to assist in the conduct of the affairs of the Association.

5.3. The Vice President in the absence or disability of the President shall exercise the powers and perform the duties of the President. He also shall assist the President generally and exercise such other powers and perform such other duties 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 it to instruments requiring a seal when duly signed. He shall keep the Official Records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of an association and as may be required by the Directors or the President.

5.5. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness, and shall keep the financial books of the Association in accordance with good accounting practices, except to the extent such responsibilities are delegated to the manager of the Association, if any; and he shall perform all other duties incident to the office of Treasurer.

5.6. The compensation, if any, of all officers and the compensation of all employees of the Association shall be fixed by the Directors. The provision that Directors receive no compensation unless determined by the members shall not preclude the Board of Directors from employing a Director as an employee of the Association, nor preclude the contracting with a Director for the management of the Condominium. No officer shall solicit, offer to accept, or accept any thing

or service of a value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any officer who knowingly so solicits, offers to accept, or accepts anything or service of a value is subject to a civil penalty pursuant to Section 718.501(1)(d)4., Fla. Stat. However, the provisions hereof do not prohibit an officer from accepting services or items received in connection with trade fairs or education programs.

5.7. All officers serve at the pleasure of the Board of Directors. Any officer may be removed by a vote of not less than two-thirds (2/3) of the Directors at a special meeting called for that purpose.

6. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration of Condominium and Articles of Incorporation shall be supplemented by the following provisions:

6.1. Accounts. The receipt and expenditures of the Association shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be Common Expenses:

a. Current expense, which shall include all receipts and expenditures within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves, to additional improvements or to operations. The balance in this fund at the end of each year shall be applied to reduce the Assessments for current expense for the succeeding year.

b. Reserve for deferred maintenance, which shall include funds for maintenance items that occur less frequently than annually.

c. Reserve for replacement, which shall include funds for repair or replacement required because of damage, destruction or obsolescence.

d. Betterments, which shall include the funds to be used for capital expenditures for additional improvements or additional personal property that will be part of the Common Elements or Association Property, if any.

6.2. Annual Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray the anticipated current common operating expenses and unpaid operating expenses previously incurred and to provide and maintain funds for the foregoing reserves according to good accounting practices. In addition, if the Association maintains Limited Common Elements with the cost to be shared only by those entitled to use such Limited Common Elements, the budget or a schedule attached to the budget, shall show amounts budgeted therefor. The reserve accounts for capital expenditures and deferred maintenance shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement costs, and for any other item for which the deferred maintenance expense or replacement cost exceeds ten thousand dollars (\$10,000.00). In computing the amount to be reserved, the Association may adjust such replacement reserve assessments annually to account for extension of the useful life of a reserve item caused by deferred maintenance. Such reserve funds and any interest accruing thereon shall remain in the reserve account for authorized reserve expenditures, unless their use for other purposes is approved in advance by a vote of the majority of the voting interests present at a duly called meeting of the Association.

a. The foregoing is subject to the vote of the majority of the members other than Developer present at a duly called meeting of the Association called to determine to provide no reserves or reserves less adequate than required for that fiscal year. If such meeting has been called and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect. Notwithstanding anything to the contrary contained herein, prior to turnover of control of the Association to the Unit Owners other than Developer, the Developer may vote to waive the reserves or reduce the funding of reserves for the first two (2) fiscal years of the operation of the

Association, beginning with the fiscal year in which the initial Declaration is recorded, after which waiver or reduction shall require vote pursuant to the first two sentences of (a) hereinabove.

b. If the budget is amended after adoption, a copy of the amended budget shall be furnished to each member.

c. Excessive Budget. Where the annual budget for Common Expenses requires assessment against the Unit Owners in any fiscal or calendar year exceeding 115 % of such Assessments for the previous year, the Board of Directors, upon written application of at least ten percent (10) of the Voting Interests of the Unit Owners, received within twenty-one(21) days of the adoption of the annual budget, shall call a special meeting of the Unit Owners to be held within sixty(60) days from the date of the adoption of the annual budget. At least fourteen(14) days prior to such special meeting, the Board shall deliver by hand or by mail, notice of the special meeting to all Unit Owners. At the special meeting the Unit Owners shall consider and adopt a budget. The budget shall be adopted by a vote of not less than a majority of the Voting Interests of the Unit Owners.

6.3. Assessments. Assessments against the members and the Units for their proportionate shares of the annual budget shall be made by the Board of Directors monthly in advance on or before the 1st day of each calendar month. Such Assessments shall be due and payable on the first day of each calendar month for which they are made. If a monthly Assessment is not made as required, an Assessment shall be presumed to have been made in the amount of the last prior Assessment. In the event the monthly Assessment proves to be insufficient, the Assessment may be amended at any time by the Board of Directors if the Assessments for the year to date do not exceed the annual budget for that year. Any Assessments that do exceed such level (except for emergency Assessments) shall be subject to the majority approval of the Voting Interests of the Association. The unpaid portion of the amended Assessment shall be due upon the first day of the month next succeeding the month in which the amended Assessment is made or as otherwise provided by the Board of Directors.

6.4. Assessments for Emergencies. Assessments for Common Expenses for emergencies of \$500.00 or less per Unit may be levied by the Board of Directors in their sole judgment and discretion. Assessments for Common Expenses for emergencies in excess of \$500.00 per Unit shall be made only after notice of the need for such proposed Assessment is given to the Unit Owners. After such notice and upon approval by at least one-half of the Voting Interests, the Assessment shall become effective and it shall be due and payable at such time and in such manner as the Board of Directors of the Association may require in the notice of such Assessment. Assessments for Common Expenses for emergencies in an amount of \$500.00 per Unit or less shall become effective and shall be due and payable at such time and in such manner as the Board of Directors of the Association may require in the notice of such Assessment.

6.5. Extraordinary Repair Costs. If the Association shall be required to perform any maintenance, repairs or replacement work on any Unit or home within any Unit for which an individual Owner or Owners are financially responsible hereunder or under the Declaration or Articles, the Association shall demand payment of the cost incurred from the Owner or Owners thereof for the cost of the work performed to recover the actual amounts expended by the Association in making or causing to be made such maintenance, repair, replacement work plus, in the event such work was attributable to a violation of any of the provisions of the Declaration of Condominium or the Rules and Regulations, an amount, to be determined by the Board of Directors not to exceed twenty-five percent (25%) of the total amount thereof to cover overhead and administrative costs of the Association. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the property owned or managed by the Association. When less than all of the Owners are responsible for the existence of any such lien, the Owners responsible shall be jointly and severally liable for any payment necessary to discharge the same and for all costs and expenses, including reasonable attorneys' fees, incurred by reason of such lien and the Association shall demand payment from such Owners for such amounts.



6.6. Assessments for Betterments and Reserves. The Board of Directors of the Association may impose Assessments for betterments to the Condominium or Association Property, if any, on the members and may also establish reserves. In determining whether a current year's Assessments are in excess of the Assessments for the preceding year, Assessments for betterments and reserves shall be excluded.

6.7. Excess Assessments. Each year at the annual Owner's meeting or at a special meeting called for such purpose, the members shall determine whether to return to themselves any excess Assessments (other than extraordinary Assessments) not actually used in the managing, operating and maintaining of or the creation of reserves for the Condominium and the Association or to have the excess applied against Assessments for Common Expenses for the following year. In the event such excess is determined to be returned to the Owners, it shall be allocated pursuant to the pro rata share in the Common Surplus owned by each Unit.

6.8. Collection. Assessments and installments of Assessments on Unit Owners not paid when due shall bear interest at the highest lawful rate per annum from the due date until paid. If a Unit Owner shall be in default in the payment of an installment of an Assessment, upon filing a claim of lien as provided hereinbelow, the Association may accelerate the balance of the installments remaining of the Assessment due for the fiscal year from the Unit Owner. The Association may also assess a late charge on delinquent Assessments in addition to such interest in an amount not to exceed the greater of twenty-five dollars (\$25.00) or five percent (5%) of each installment of the Assessment for each delinquent installment the payment of which is late. This Association has a lien on each Unit and the improvements thereon for any unpaid Assessments and other sums owing to the Association by the Unit Owner together with the above interest and for reasonable attorneys' fees incurred by this Association incident to the collection of the Assessment or enforcement of the lien. The lien shall be effective upon recording a claim of lien in the Public Records of Sarasota County, Florida stating the description of the Condominium parcel, the name of the record owner, the name and address of the Association and the amount due and due dates. The claim of lien shall secure all unpaid Assessments, interest, late charges, costs and attorneys' fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. This lien shall be in effect for the period provided in the Florida Condominium Act. A Claim of Lien shall be signed and acknowledged by an officer or agent of this Association and upon payment the person making the payment shall be delivered a satisfaction of the lien in recordable form. Such payment received shall be applied first to interest accrued, next to late charges, then to any costs and reasonable attorney's fees incurred in collection, and lastly to the delinquent Assessment. This Association may bring an action in its name to foreclose a lien for Assessments unpaid in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien. If a member shall fail to pay any Assessment, or part of it, when due, this Association through its Treasurer, shall mail a notice of default to the member, by certified or registered mail, return receipt requested, or by delivery of a true copy of it to the Unit Owner, which notice shall state the intent of this Association to foreclose its lien to collect the unpaid Assessments. This Association shall proceed thirty (30) days following delivery of this notice and non-payment by the Unit Owner to file a foreclosure action and may apply therein to the court for the Unit Owner to pay a reasonable rental for the Unit and if granted, this Association shall be entitled to the appointment of a receiver to collect the same. This Association may bid on the Unit at foreclosure sale and may acquire and hold, lease, mortgage and convey the same. A first mortgagee or its successors or assignees who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure, is liable for the unpaid Assessments that became due prior to the mortgagee's receipt of the deed, except as exempted by S. 718.116(1)e, Fla. Stat. Provided the first mortgagee joined the Association as a defendant in the mortgagee's foreclosure action, however, the mortgagee's liability is limited to a period not exceeding six (6) months, but in no event does the first mortgagee's liability exceed one percent (1%) of the original mortgage debt. In no event shall the mortgagee be liable for more than six (6) months of the Unit's unpaid Common Expenses or Assessments accrued before the acquisition of the title to the Unit by the mortgagee or one percent (1 %) of the original mortgage debt, whichever amount is less. If any unpaid share of Common Expenses or Assessments is extinguished by foreclosure of such superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments are Common Expenses collectable from all Unit Owners in the Condominium in which that Unit is located.

6.9. The depository of the Association shall be in such bank or banks as shall be designated from time to time by the Board of Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors. All funds shall be maintained separately in the Association's name. Reserve and operating funds may be commingled for purposes of investment but separate ledgers must be maintained for each account. No manager or business entity required to be licensed or registered under Section 468.432, Fla. Stat., and no agent, employee, officer, or director of the Association shall commingle any Association funds with his funds or with the funds of any other condominium association.

6.10. An annual audit of the accounts of the Association shall be made by a certified public accountant, only if requested by at least a majority of the Unit Owners, and a copy of the audit report shall be furnished to each member not later than March 1 of the year following the year for which the audit is requested and made. If no audit is requested, the report of cash receipts and expenditures required under Section 718.111(13)(b)2, Fla. Stat., and Rule 61B-22.006 F.A.C. shall be provided by mail or by personal delivery to each Unit Owner.

6.11. Fidelity bonds. The Association shall obtain and maintain adequate insurance or fidelity bonding of all persons who control or disburse funds of the Association. As used herein, the term "persons who control or disburse funds of the Association" includes, but is not limited to, those individuals authorized to sign checks, and the President, Secretary, and Treasurer of the Association.

The Association shall also require any manager or management agent that handles funds for the Association to also be covered by its own adequate insurance policy or fidelity bond. All fidelity bonds must name the Association as an obligee, and all premiums on such bonds shall be paid by the Association as a Common Expense. The insurance policy or fidelity bonds shall cover the maximum funds that will be in the custody of the Association or its management agent at any time. The insurance policies or fidelity bonds shall include a provision requiring at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage on any Unit in the Condominium before the policy or bond can be canceled or substantially modified for any reason.

6.12. Unpaid Assessment Certificate. Any Owner of a Unit or any mortgagee of any Unit may require this Association to furnish a certificate within fifteen (15) days of the request showing the amount of all unpaid Assessments and other moneys owed to the Association with respect to the Unit. Any person other than the Owner who relies upon the certificate shall be protected by it.

6.13. The Association shall maintain accounting records according to good accounting practices which shall be open to the inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of which shall be supplied at least annually to Unit Owners or their authorized representatives. Such records shall include but not be limited to: (a) a record of all receipts and expenditures for the Condominium; and (b) an account for each Unit which shall designate the name and address of the Unit Owner, the amount of each Assessment, the date and amounts in which the Assessments come due, the amount paid upon the account, and the balance due. The Association shall also maintain all other official financial and other books and records required by the Florida Condominium Act. All accounting and financial records shall be maintained for at least seven (7) years.

7. Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration of Condominium, Articles of Incorporation, or these Bylaws.

8. Amendments. These Bylaws may be amended in the following manner:

8.1. 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.

8.2. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

a. not less than 66⅔% of the entire membership of the Board of Directors and by not less than 66⅔% of the votes (Voting Interests) of the entire membership of the Association; or

b. by not less than 80% of the votes (Voting Interests) of the entire membership of the Association; or

c. until the first election of Directors, by all of the members of the First Board of Directors.

8.3. Proviso. Provided, however, that no amendment shall discriminate against any Unit Owner nor against any Unit or class or group of Units or the Units in the Condominium unless the Unit Owners so affected shall consent and no amendment shall be made that is, in conflict with the Articles of Incorporation or the Declaration of Condominium. Provided further, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities reserved to the Developer or mortgagee without their consent, and no amendment shall be made to Sections 2.11, 3.3, 3.4.f., or 6.2.a. without the written approval of the Developer of the Condominium so long as the Developer owns a Unit in the Condominium.

8.4. Limitation on Amendments. No Bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing Bylaws shall contain the full text of the Bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphen. However, if the proposed change is so extensive that this procedure would hinder rather than assist the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead, a notation shall be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Bylaws. See Bylaw for present text."

8.5. Execution and Recording. No amendment to the Bylaws shall be valid unless set forth in or annexed to a recorded amendment to the Declaration identifying the Official Records Book and first page wherein the Declaration has been recorded. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of the Declaration and Bylaws, which certificate shall be executed by the appropriate officers of the Association with the formalities of a deed. The amendment shall be effective when such certificate and amendment are recorded in the Public Records of Sarasota County, Florida.

## 9. Official Records and Minutes.

9.1. The Association shall maintain each of the items, which is applicable, identified within Section 718.111(12), Fla. Stat., to constitute the Official Records of the Association within this State. Minutes of all meetings of the members and all meetings of the Board of Directors shall be kept in a book and such Official Records and minutes shall be available for inspection by Unit Owners and board members and their authorized representatives at all reasonable times. The right to inspect shall include the right to make or obtain copies, at the reasonable expense, if any, of the Unit Owner. The Association may adopt reasonable rules in writing regarding the frequency, time, location, notice, and manner of record inspections and copying, provided the records are made available to a Unit Owner within five (5) working days after receipt of written request by the Board or its designee. The Association shall maintain, at its election, a number of copies of the Official Records and shall maintain an adequate number of copies of the Declaration of Condominium, Articles of Incorporation, these Bylaws, and Association Rules, and all amendments to each of the foregoing, as well as the Question and Answer Sheet provided for in Section 718.504, Fla. Stat., on the Condominium or Association property to ensure the availability for inspection and/or copying

to Unit Owners and prospective purchasers and may charge its actual costs for preparing and furnishing these documents to those requesting them. The Association shall update annually the Question and Answer Sheet. All minutes shall be retained for a period of not less than seven (7) years.

9.2. Notwithstanding the foregoing, the following records shall not be accessible to Unit Owners:

a. Any record protected by the lawyer-client privilege as described in S. 90.502, Fla. Stat. and any record protected by the work-product privilege, including any record which was prepared by an Association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the Association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation, or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

b. Information obtained by an Association in connection with the approval of the lease, sale, or other transfer of a Unit.

c. Medical records of Unit Owners.

10. Association May Acquire and Enter Into Agreements. Subsequent to the recording of the Declaration of Condominium the Association may acquire or enter into agreements whereby it acquires leaseholds, memberships and other possessory or use interests in real and personal property, including but not limited to, country clubs, golf courses, marinas and other recreational facilities, whether or not contiguous to the Condominium, for the enjoyment, recreation or other use or benefit of the members, and the expense of rental, membership fees, operations, replacements and other undertakings in connection therewith shall be part of the Common Expenses. The Board of Directors of the Association may adopt covenants and restrictions relating to the use of such facilities.

11. Fines. The Association may levy reasonable fines against a Unit for failure of the Owner of the Unit or its occupant, licensee or invitee to comply with any provision of the Declaration, the Association Bylaws, or Rules and Regulations of the Association. No fine shall become a lien against a Unit. No fine shall exceed the maximum allowed by law nor shall any fine be levied except after giving reasonable notice and opportunity for a hearing to the Unit Owner and, if applicable, its licensee or invitee. The hearing must be held before a committee of other Unit Owners. If the committee does not agree with the fine, the fine may not be so levied. No fine may exceed \$100 per violation. However, a fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, provided that no such fine shall in the aggregate exceed one thousand dollars (\$1,000.00). The provisions of this subsection shall not apply to unoccupied Units.

12. Mandatory Non-binding Arbitration. Mandatory non-binding arbitration as provided for in Section 718.1255, Fla. Stat., shall be conducted respecting disputes as defined therein.

13. Certificate of Compliance. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Condominium Units to the applicable Fire and Life Safety Code.

14. Common Elements: Limited Power to Convey. The Board of Directors has the limited power, without the joinder of any Unit Owner, to convey a portion of the Common Elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion or other public purposes, whether negotiated or as a result of eminent domain proceedings.

15. Savings Clause. Notwithstanding anything herein contained or implied to the contrary, in the event any provision or time frame contained in these Bylaws conflict with a mandatory provision or time frame of the Florida Condominium Act or the Rules of the Division of

Florida Land Sales, Condominiums and Mobile Homes then such provision or time frame of the Bylaws shall be deemed automatically amended to comply with such mandatory provision or time frame.

The foregoing were adopted as the Bylaws of Blackburn Point Marina Village Condominium Association, Inc., a corporation not for profit under the laws of the State of Florida, at the first meeting of the First Board of Directors.

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**EXHIBIT "D"**

BEGIN AT THE NORTHEAST CORNER OF SECTION 15, TOWNSHIP 38 SOUTH, RANGE 18 EAST, THENCE N89°50'40"W, ALONG THE NORTH LINE OF SAID SECTION 15, 2308.23 FEET FOR THE PRINCIPAL PLACE OF BEGINNING; THENCE S00°09'20"W, 844.78 FEET TO THE NORTH RIGHT-OF-WAY LINE OF BLACKBURN POINT ROAD (66' RIGHT-OF-WAY); THENCE N88°16'40"W, ALONG SAID RIGHT-OF-WAY, 400.15 FEET; THENCE N00°09'20"E 833.84 FEET TO THE NORTH LINE OF SAID SECTION 15; THENCE S 89°50'40"E, ALONG SAID NORTH LINE OF SECTION 15, 400.00 FEET TO THE PRINCIPAL PLACE OF BEGINNING; EXCEPT NORTH 490 FEET THEREOF, LYING AND BEING IN SARASOTA COUNTY, FLORIDA.

LESS THE FOLLOWING FOR RIGHT-OF-WAY:

COMMENCE AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF BLACKBURN POINT ROAD (RIGHT-OF-WAY WIDTH VARIES) AND THE WESTERLY RIGHT-OF-WAY OF WOODS POINT ROAD (RIGHT-OF-WAY WIDTH VARIES) AS PER THE PLAT THEREOF RECORDED IN PLAT BOOK 34, PAGES 46, 46 A&B, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA; THENCE S00°09'20"W, 10.00 FEET FOR A POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WESTERLY RIGHT-OF-WAY, S00°09'20"W, 2.00 FEET TO THE NORTHERLY MAINTAINED RIGHT- OF-WAY AS RECORDED IN PLAT BOOK 2, PAGE 16 PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA; THENCE WESTERLY ALONG THE NORTHERLY MAINTAINED RIGHT-OF-WAY, N88°16'40"W, 161.19 FEET; THENCE S01°43'20"W, 5.00 FEET TO THE NORTHERLY RIGHT-OF-WAY OF BLACKBURN POINT ROAD (66' RIGHT-OF-WAY); THENCE WESTERLY ALONG THE NORTHERLY RIGHT-OF-WAY LINE, N88°16'40"W, 238.82 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, N00°10'51"E, 7.00 FEET; THENCE EASTERLY AND PARALLEL TO THE ABOVE MENTIONED NORTH RIGHT-OF-WAY BLACKBURN POINT ROAD, S88°16'40"E, 400.14 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,995 SQUARE FEET, MORE OR LESS.

REMAINING PARCEL CONTAINING 136,775.5 SQUARE FEET, MORE OR LESS.

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