

CAPITAL CONNECTION, INC.

417 E. Virginia Street, Suite 1 • Tallahassee, Florida 32301
(850) 224-8870 • 1-800-342-8062 • Fax (850) 222-1222

N96000002572

Stella Maris Master Association Inc
Stella Maris Homeowners Association Inc
Stella Maris Seawall ~~Assoc~~

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****105.00 ****105.00

Effective Date -
7-1-02

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DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

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- ___ LTD Partnership File _____
- ___ Foreign Corp. File _____
- ___ L.C. File _____
- ___ Fictitious Name File _____
- ___ Trade/Service Mark _____
- Merger File _____
- ___ Art. of Amend. File _____
- ___ RA Resignation _____
- ___ Dissolution / Withdrawal _____
- ___ Annual Report / Reinstatement _____
- ___ Cert. Copy _____
- Photo Copy _____
- ___ Certificate of Good Standing _____
- ___ Certificate of Status _____
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ARTICLES OF MERGER
Merger Sheet

MERGING: -----

STELLA MARIS HOMEOWNERS' ASSOCIATION, INC., A FLORIDA ENTITY
N96000002573

STELLA MARIS MASTER SEAWALL, L.L.C., A FLORIDA ENTITY
L01000002297

INTO

STELLA MARIS MASTER ASSOCIATION, INC. which changed its name to

STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC., a Florida
entity, N96000002572.

File date: June 26, 2002 , effective July 1, 2002

Corporate Specialist: Trevor Brumbley

02 JUN 26 PM 1:17
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

APPROVED
AND
FILED

ARTICLES OF MERGER

STELLA MARIS MASTER ASSOCIATION, INC.
STELLA MARIS HOMEOWNERS' ASSOCIATION, INC.
STELLA MARIS SEAWALL, L.L.C.

The following articles of merger are being submitted in accordance with Sections 617.1105 and 608.4382, Florida Statutes. The undersigned entities affirm and adopt the following:

1. The Plan of Merger of STELLA MARIS MASTER ASSOCIATION, INC., a Florida corporation not-for-profit; STELLA MARIS HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit; and STELLA MARIS SEAWALL, L.L.C. a Florida Limited Liability Company, has been duly approved as follows:

- (a) In accordance with the provisions of Section 617.1103, Florida Statutes, by the Board of Directors and the members of STELLA MARIS MASTER ASSOCIATION, INC.
- (b) In accordance with the provisions of Section 617.1103, Florida Statutes, by the Board of Directors and the members of STELLA MARIS HOMEOWNERS' ASSOCIATION, INC.
- (c) In accordance with the provisions of Section 608.4381, Florida Statutes, by the Managing Members and the members of STELLA MARIS SEAWALL, L.L.C.

2. The surviving corporation shall be STELLA MARIS MASTER ASSOCIATION, INC., a Florida corporation not-for-profit, and the name of that corporation shall be changed to STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC.

3. The Plan of Merger was adopted by receipt of written consent from at least sixty-seven percent (67%) of the votes of the members of each of the entities as of June 10, 2002.

4. The Plan of Merger is attached herewith to these Articles of Merger as Exhibit "1."

5. The Articles of Incorporation of the surviving corporation, are and shall be the Articles of Incorporation of the surviving corporation, except to the extent amended in the Plan Merger.

6. The effective date of the merger shall be July 1, 2002.

Dated this 19th day of June, 2002.

By the Board of Directors of STELLA MARIS MASTER ASSOCIATION, INC.

By: Theodore R. Bissell
Theodore R. Bissell, President

By: James E. Morris
James E. Morris, Secretary

*This vote is sufficient to approve the merger, and adopt the amended and restated Declaration of Covenants, Conditions, Restrictions and Easements, Articles of Incorporation and Bylaws.

By the Board of Directors of STELLA MARIS HOMEOWNERS' ASSOCIATION, INC.

By: Theodore R. Bissell
Theodore R. Bissell, President

By: James E. Morris
James E. Morris, Secretary

By the Managing Members of STELLA MARIS SEAWALL, L.L.C.


By: James E. Morris
James E. Morris, Managing Member

By: Dale M. Lambert
Dale M. Lambert, Managing Member

By: George H. Bond
George H. Bond, Managing Member

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was executed before me 19th day of June, 2002, by Theodore R. Bissell, as President of STELLA MARIS MASTER ASSOCIATION, INC., a Florida corporation not for profit, and as President of STELLA MARIS HOMEOWNERS' ASSOCIATION, INC., on behalf of the Associations. He (choose one) () is personally known to me or () has provided _____ for identification and did not take an oath.

 Anja C DePauw
My Commission CC946581
Expires June 18, 2004


Anja C. DePauw
Signature of Notary Public

Print Name of Notary Public (SEAL)
My Commission Expires:

JUN 20 2002 11:17
NOTARY PUBLIC
STATE OF FLORIDA
CC946581

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was executed before me 19th day of June, 2002, by James E. Morris, as Secretary of STELLA MARIS MASTER ASSOCIATION, INC., a Florida corporation not for profit, and as President of STELLA MARIS HOMEOWNERS' ASSOCIATION, INC., on behalf of the Associations. He (choose one) () is personally known to me or () has provided _____ for identification and did not take an oath.

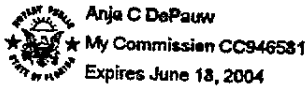
 Anja C DePauw
My Commission CC946581
Expires June 18, 2004

Anja C. DePauw
Signature of Notary Public

Print Name of Notary Public (SEAL)
My Commission Expires: 06/18/04

STATE OF FLORIDA
COUNTY OF COLLIER

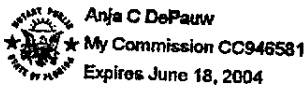
The foregoing instrument was executed before me this 12th day of June, 2002, by James E. Morris, as a Managing Member of STELLA MARIS SEAWALL, L.L.C., a Florida Limited Liability Company on behalf of the Company. He (choose one) () is personally known to me or () has provided _____ for identification and did not take an oath.



Anja C. DePauw
Signature of Notary Public
ANJA C. DEPAUW
Print Name of Notary Public (SEAL)
My Commission Expires: 06/18/04

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was executed before me this 14th day of June, 2002, by Dale M. Lambert, as a Managing Member of STELLA MARIS SEAWALL, L.L.C., a Florida Limited Liability Company on behalf of the Company. He (choose one) () is personally known to me or () has provided _____ for identification and did not take an oath.



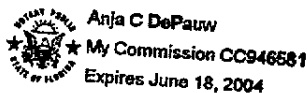
Anja C. DePauw
Signature of Notary Public
ANJA C. DEPAUW
Print Name of Notary Public (SEAL)
My Commission Expires: 06/18/04

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AVENUE
MIAMI, FL 33136

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STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was executed before me this 11th day of June, 2002, by George H. Bond, as a Managing Member of STELLA MARIS SEAWALL, L.L.C., a Florida Limited Liability Company on behalf of the Company. He (choose one) () is personally known to me or () has provided FL Drivers License for identification and did not take an oath.



Anja C. DePauw
Signature of Notary Public
ANJA C. DEPAUW
Print Name of Notary Public (SEAL)
My Commission Expires: 06/18/04

PLAN OF MERGER

**STELLA MARIS MASTER ASSOCIATION, INC.
STELLA MARIS HOMEOWNERS' ASSOCIATION, INC.
STELLA MARIS SEAWALL, L.L.C.**

WHEREAS, STELLA MARIS MASTER ASSOCIATION, INC., a Florida not for profit corporation, is the corporate entity responsible for the operation and management of that certain property known as STELLA MARIS, as more particularly described in the Declaration of Covenants, Conditions, Restrictions and Easements therefor located in O.R. Book 2186, at Page 0360, in the Public Records of Collier County, Florida; and

WHEREAS, STELLA MARIS HOMEOWNERS' ASSOCIATION, INC., a Florida not for profit corporation, is the corporate entity responsible for the operation and management of that certain property known as STELLA MARIS SINGLE FAMILY COMMUNITY, as more particularly described in the Declaration of Covenants, Conditions, Restrictions and Easements therefor located in O.R. Book 2186, at Page 0414, in the Public Records of Collier County, Florida; and

WHEREAS, STELLA MARIS SEAWALL, L.L.C., a Florida limited liability company, is the entity that owns and is responsible for the operation and management of the seawall that is adjacent to and serves the properties subject to the Declarations for Stella Maris and Stella Maris Single Family Community; and

WHEREAS, the Members of the aforementioned entities are the same individuals who are eligible for their membership in each of the entities based upon their ownership of real property in Stella Maris; and

WHEREAS, as the forty-eight (48) Members of STELLA MARIS SEAWALL, L.L.C. each have made an individual capital contribution to STELLA MARIS SEAWALL, L.L.C. which appears in the financial records of the company as follows: Forty five (45) of the Members each have a capital account (equity interest) in STELLA MARIS SEAWALL, L.L.C. in the amount of Four Thousand Six Hundred Forty Nine and 00/100 Dollars (\$4,649.00) and three (3) Members each have a capital account (equity interest) in STELLA MARIS SEAWALL, L.L.C. in the amount of Four Thousand Six Hundred Forty Eight and 00/100 Dollars (\$4,648.00); and

WHEREAS, the Boards of Directors, the Managing Members, and the Members of the various entities have determined that there is no purpose served by the existence of three separate entities and that simplicity of operation of the various properties and facilities may be enhanced by the merger of the aforementioned entities;

THEREFORE, BE IT RESOLVED, that the following plan of merger, which was adopted by each party to the merger in accordance with Sections 617.1103 and 608.4381, Florida Statutes, is being submitted in accordance with Sections 617.1101 and 608.438, Florida Statutes, is hereby adopted:

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

1. STELLA MARIS MASTER ASSOCIATION, INC., STELLA MARIS HOMEOWNERS' ASSOCIATION, INC. and STELLA MARIS SEAWALL, L.L.C. shall merge into STELLA MARIS MASTER ASSOCIATION, INC., the name of which shall be changed to STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC., upon the effective date of the merger, which shall be the surviving corporation, without prejudice of the right of surviving corporation to later effect a change of corporate name in the manner provided by law.
2. Subsequent to the merger, STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC. f/k/a STELLA MARIS MASTER ASSOCIATION, INC. shall continue to be subject to its Articles of Incorporation and Bylaws as they may be amended from time to time, and as they shall be amended and restated as contemplated in this plan of merger.
3. The manner and basis of converting the interests of the Members of STELLA MARIS SEAWALL, L.L.C. as of the effective date of the merger shall be as follows:
 - A. The total of the capital contributions made by the Members to STELLA MARIS SEAWALL, L.L.C. (i.e. the total equity interest) is Two Hundred Twenty Three Thousand One Hundred Forty Nine and 00/100 Dollars (\$223,149.00) which amount is deemed and agreed to be the fair market value of STELLA MARIS SEAWALL, L.L.C. together with its assets.
 - B. STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC. f/k/a STELLA MARIS MASTER ASSOCIATION, INC. agrees to reimburse the Members of STELLA MARIS SEAWALL, L.L.C. for costs and fees that they have incurred for the purposes of completing the merger in the amount of Nine Thousand Three Hundred One and 00/100 (\$9,301.00) and STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC. f/k/a STELLA MARIS MASTER ASSOCIATION, INC. agrees to pay all additional fees and costs in excess of that amount incurred for the purposes of completing the merger by STELLA MARIS SEAWALL, L.L.C. subsequent to the merger.
 - C. Each of the fifty Members of STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC. f/k/a STELLA MARIS MASTER ASSOCIATION, INC. shall be specially assessed one fiftieth (1/50) of the fair market value of STELLA MARIS SEAWALL, L.L.C. plus one fiftieth (1/50) of fees and costs that the parties agreed to reimburse the Members of STELLA MARIS SEAWALL, L.L.C. for the costs associated with the merger [i.e. Four Thousand Six Hundred Forty Nine and 00/100 Dollars (\$4,649.00)] for the right to acquire and merge with STELLA MARIS SEAWALL, L.L.C.
 - D. As of the date of the merger, there are forty-eight (48) Members of STELLA MARIS SEAWALL, L.L.C. all of whom are also Members of STELLA MARIS MASTER ASSOCIATION, INC. and STELLA MARIS HOMEOWNERS' ASSOCIATION, INC. prior to the merger. Each of those Members shall be given a credit by the surviving corporation, STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC. f/k/a STELLA MARIS MASTER ASSOCIATION, INC., in the amount of their respective capital account (equity interest) in STELLA MARIS SEAWALL, L.L.C. which shall be used to offset assessments that come due against their Lot pursuant to the STELLA MARIS governing documents.

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- E. Subsequent to the merger event, each of the fifty (50) Members of STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC. f/k/a STELLA MARIS MASTER ASSOCIATION, INC. shall have an equal interest in that corporation.
- 4. STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC. f/k/a STELLA MARIS MASTER ASSOCIATION, INC., shall upon the merger, assume all powers, rights, duties, assets, and liabilities of STELLA MARIS MASTER ASSOCIATION, INC., STELLA MARIS HOMEOWNERS' ASSOCIATION, INC. and STELLA MARIS SEAWALL, L.L.C.
- 5. This plan of merger shall require amendments to governing documents for Stella Maris and for the surviving corporation to amend and restate its Articles of Incorporation and Bylaws, all of which have been accomplished in the attached Consolidated, Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris together with Exhibits "A" through "E" thereto.
- 6. Should any of the merging entities fail to obtain the requisite approval of its Board of Directors, Managing Members and/or membership, then this Plan of Merger and the attachments hereto shall be ineffective and the merger shall not proceed.
- 7. The adoption of this plan of merger is a consolidation of the various properties operated by the merging corporations.
- 8. This plan of merger shall become effective on July 1, 2002 with the approval of the Board of Directors and membership of each merging corporation, pursuant to §617.1103 and §608.4381, Florida Statutes, and filing of Articles of Merger with the Department of State pursuant to §617.1105 and §608.4382, Florida Statutes.
- 9. Upon or prior to the effective date of the plan of merger, the Directors and Officers of the surviving corporation shall consist of the Directors and Officers of STELLA MARIS HOMEOWNERS' ASSOCIATION, INC., immediately prior to the merger and they shall serve until next annual meeting of the surviving corporation at which their successors are to be elected.

APPROVED:

By Order of the Board of Directors of STELLA MARIS MASTER ASSOCIATION, INC. dated this 12th day of June, 2002

By: *Theodore R. Bissell*
Theodore R. Bissell, President

By: *James E. Morris*
James E. Morris, Secretary

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 AND
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02 JUN 26 PM 1:17
 DEPARTMENT OF STATE
 DIVISION OF CORPORATIONS
 AND BUSINESS REGISTRATION

By Order of the Board of Directors of STELLA MARIS HOMEOWNERS' ASSOCIATION, INC. dated this 12th day of June, 2002

By: Theodore R. Bissell
Theodore R. Bissell, President

By: James E. Morris
James E. Morris, Secretary

By Order of the Managing Members of STELLA MARIS SEAWALL, L.L.C. dated this 12th day of June, 2002

By: James E. Morris
James E. Morris, Managing Member

By: Dale M. Lambert
Dale M. Lambert, Managing Member

By: George H. Bond
George H. Bond, Managing Member

APPROVED:

By Order of the Membership of STELLA MARIS MASTER ASSOCIATION, INC. dated this 12th day of June, 2002

By: Theodore R. Bissell
Theodore R. Bissell, President

By: James E. Morris
James E. Morris, Secretary

By Order of the Membership of STELLA MARIS HOMEOWNERS' ASSOCIATION, INC. dated this 12th day of June, 2002

By: Theodore R. Bissell
Theodore R. Bissell, President

By: James E. Morris
James E. Morris, Secretary

By Order of the Membership of STELLA MARIS SEAWALL, L.L.C. dated this 12th day of June, 2002

By: James E. Morris
James E. Morris, Managing Member

By: Dale M. Lambert
Dale M. Lambert, Managing Member

By: George H. Bond
George H. Bond, Managing Member

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SECRETARY'S OFFICE
STELLA MARIS MASTER ASSOCIATION, INC.

APPROVED AND FILED

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

**PROPOSED CONSOLIDATED, AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
STELLA MARIS**

Whereas, on May 21, 1996, the original Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris was recorded in Official Record Book 2186, at Pages 0360 *et seq.*, of the Official Records of Collier County, Florida (the "Master Declaration");

Whereas, Stella Maris Master Association, Inc. (the "Master Association") is the entity responsible for the enforcement of the restrictions applicable and operation of the property subjected to the Master Declaration pursuant to the Master Declaration;

Whereas, on May 21, 1996, the original Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris Single Family Community was recorded in Official Record Book 2186, at Pages 0414 *et seq.*, of the Official Records of Collier County, Florida (the "Declaration");

Whereas, Stella Maris Homeowners' Association, Inc. (the "Association") is the entity responsible for the operation of the property subjected to the Declaration;

Whereas, the Master Declaration and the Declaration were both declared by the same Declarant;

Whereas, it was the apparent intent of the Declarant that the Master Declaration be restrictive covenants that bound the property subjected to the Declaration together with other properties in close proximity to that property that would be subject to a separate declaration in addition to the Master Declaration;

Whereas, for whatever reason, the Declarant chose not to subject any property to the Master Declaration other than the property that was also subjected to the Declaration together with a small parcel of land between two (2) lots in Stella Maris that is primarily used as a drainage area serving the lots in Stella Maris (i.e. substantially the same land is subject to both of the Declaration and the Master Declaration);

Whereas, the continued existence of separate declarations serving substantially the same property serves no practical purpose;

Whereas, in addition to the property subjected to the Declaration and the Master Declaration, there is a separate parcel approximately ten feet (10') wide that borders each of the lots in Stella Maris which contains a sidewalk and a seawall that services the property subjected to the Declaration and the Master Declaration which is legally described in Exhibit "B" hereto (the "Seawall Property");

Whereas, the Seawall Property was owned by the Declarant, but not previously subject to either the Declaration or the Master Declaration;

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

-1-

Whereas, the Declarant sold the Seawall Property to Stella Maris Seawall, L.L.C. (the "L.L.C.") the members of which are required to be lot owners in Stella Maris pursuant to the L.L.C.'s Operating Agreement;

Whereas, the membership of the Master Association, the Association and the L.L.C. are substantially the same people, all of whom are members of the respective entity by virtue of their ownership of a lot in Stella Maris;

Whereas, the collective membership of the Master Association, the Association and the L.L.C. is desirous of merging all of the entities into one entity that is responsible for the operation of all of the properties and combining the governing documents into one comprehensive set of documents;

Whereas, simultaneously with the approval of this consolidated Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris, the membership of each entity described above approved a merger of the three (3) entities and agreed to subject the Seawall property to the Declaration;

Now Therefore, the Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris and the Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris Single Family Community are hereby consolidated, amended and restated in their entirety, as follows:

1. **SUBMISSION STATEMENT.** This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made by Stella Maris Master Homeowners' Association, Inc. (f/k/a Stella Maris Master Association, Inc.), a Florida corporation not for profit. The real property subject to this Declaration is legally described as:

All of Stella Maris, according to the Plat thereof recorded in Plat Book 26, Pages 26 and 27, of the Public Records of Collier County, Florida, less and except Lot 72 (The legal description of the such property is shown on Exhibit "A" to the original Declarations, as amended, which Exhibits are hereby incorporated by reference);

together with the Seawall Property which is being subjected to this Declaration which is legally described in Exhibit "B" hereto (hereinafter referred to as the "Property" or the "Neighborhood." Attached as Exhibit "C" to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris is a joinder and consent given by Stella Maris Seawall, L.L.C., a Florida limited liability company, which is the owner of the Seawall Property.

The covenants and restrictions contained in this Declaration run with the land and are binding upon, and inure to the benefit of, all present and future Owners of Lots. The acquisition of any ownership interest in the real property, or the lease, occupancy, or use of any portion of a Lot or Living Unit, constitutes an acceptance and ratification by the Owner of all provisions of this Declaration, as it may be amended from time to time, and an agreement to bound by its terms.

2. **DEFINITIONS.** Certain words and phrases, as used in this Declaration and its recorded exhibits, are intended to have the meanings stated in this Section, unless the context clearly requires another interpretation.

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

-2-

2.1 "**Association**" means Stella Maris Master Homeowners' Association, Inc., a Florida corporation not for profit.

2.2 "**Board**" means the Board of Directors of the Association.

2.3 "**Common Areas**" means any and all parts of the Property that are dedicated to or owned by the Association or any other property that is dedicated, conveyed, leased or licenced to the Association, and which is intended to be devoted to the common use and enjoyment of the Members. Common Areas include, but are not limited to the Water Management Systems and the Seawall Property.

2.4 "**Declaration**" or "**Declaration of Covenants**" means this Declaration of Covenants, Conditions, Restrictions and Easements of Stella Maris, as amended from time to time.

2.5 "**Development Plan**" means the Planned Unit Development Ordinance for Stella Maris, approved by Collier County, Florida, for the development of Stella Maris, as amended or implemented from time to time by such plats as may be approved and filed of record.

2.6 "**District**" means the Port of the Islands Community Development District, its successors and assigns which is established pursuant to Chapter 190, Florida Statutes, as a uniform development district that imposes taxes and/or assessments on the Property and throughout the Port of the Islands community through a special taxing district. (These taxes and assessments pay the construction, operation and/or maintenance costs of facilities owned and operated by the District, and are set annually by the District's governing Board. These taxes and assessments are in addition to the County and all other taxes and assessments provided by law.)

2.7 "**Family**" or "**Single Family**" shall refer to any one of the following:

- (A) One natural person.
- (B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
- (C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

2.8 "**Governing Documents**" means the Declaration of Covenants, Articles of Incorporation and Bylaws, all as amended from time to time. If there is an irreconcilable conflict between provisions in any two or more of these documents, the first document to appear in the foregoing list shall prevail over all others.

2.9 "**Guest**" is a person who is physically present in a Living Unit on a temporary basis at the invitation of the Owner, or tenant, or other legally permitted occupant, without paying anything of value for the privilege.

2.10 "**Lease**" means the grant by an Owner to another person of a right to use the Owner's Living Unit as a temporary residence for valuable consideration.

2.11 "**Living Unit**" or "**Residence**" means any or all of the residential structures constructed on the Lots, each intended for use and occupancy as a residence for a single family.

2.12 "**Majority Vote**" Or "**Majority Vote Of Members**" means, unless otherwise stated, 50% plus one of the votes cast in person, by proxy, or by mail.

2.13 "**Lot**" means any one or more of the platted parcels of land into which the Neighborhood is subdivided, upon each of which a Residence appears. "Lot" is to be interpreted as though followed immediately by the words "and the Living Unit constructed thereon," unless the context clearly requires a different interpretation.

2.14 "**Occupy**" when used in connection with a Living Unit, means the act of residing in the unit on two (2) or more consecutive nights. An "**Occupant**" is one who occupies a unit. "**Occupy**" means the act of being an occupant.

2.15 "**Owner**" or "**Member**" means a record Owner of legal title to a Lot.

2.16 "**Primary Occupant**" means one natural person approved for occupancy of a Living Unit, when record legal title to the Living Unit is held in the name of more than two persons, or in trust, or by a partnership or corporation or other entity which is not a natural person, as provided in Section 13.1 below.

2.17 "**Property**" "**Properties**" or "**Neighborhood**" means all the real property which is subject to this Declaration, including Common Areas and Lots.

2.18 "**Rules and Regulations**" means the administrative rules and regulations governing the use of the Common Areas and procedures for administering the Association, as adopted or amended by resolution of the Board of Directors.

2.19 "**Service Charge**" means a charge levied against one or more Lots for any service, material or combination thereof which may be provided by the Association for the benefit of the Lot Owners, such as contracting for repairs, services or materials. Amounts paid or debt incurred by the Association on behalf of the Lot Owners accepting or receiving the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots or Living Units so benefitted. The Owner(s) are deemed to have agreed to pay the charge by subscribing, requesting, or accepting the benefits of materials or service.

2.20 "**Voting Interests**" refers to the arrangement for voting by the members established in the Articles of Incorporation and the Bylaws by which the Owner of each Lot has one (1) indivisible vote, which may be cast as provided in the Bylaws when a vote of the members on Association matters is required or permitted. There are fifty (50) Lots, therefore there are fifty (50) voting interests.

2.21 "**Water Management System**" means constructed surface and/or underground systems and facilities for the drainage and/or storage of surface water throughout the Property.

3. **APPURTENANCES; GENERAL PROPERTY RIGHTS; DURATION OF COVENANTS.**

3.1 **Appurtenances To The Lots.** The Owner of each Lot has certain rights and obligations that are appurtenant to the Lot, and cannot be changed or taken away from the Owner of the Lot without his consent and that of any person holding a lien on the Lot, including without limitation the following:

- (A) Membership in Stella Maris Master Homeowners' Association, Inc. and the right to cast one (1) indivisible vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.
- (B) The exclusive right to use the Lot, subject to the restrictions imposed herein.
- (C) The non-exclusive right to use the Common Areas for the purposes for which they are intended and reasonably suited, subject to the rules of the Association, and to all restrictions and limitations imposed in the Governing Documents, as amended from time to time.
- (D) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the Owner's proportional share of liability for the assessments for common expenses levied by the Association. The ownership of an undivided share of the assets and common surplus does not entitle any Owner to a distribution.
- (E) The appurtenances to a Lot automatically pass with the title to the Lot, whether separately described or not, and cannot be separated from the title to the Lot, or assigned, pledged or transferred, except with legal title to the Lot.
- (F) Other appurtenances expressly created in the Governing Documents, as may be amended from time to time.
- (G) Other appurtenances expressly created in the POI Declaration, as may be amended from time to time.
- (H) Other appurtenances expressly created in the ordinance creating the District, as may be amended from time to time.

3.2 **Use And Enjoyment Of Lots And Common Areas.** An Owner is entitled to exclusive use and possession of his Lot and Living Unit subject to the Governing Documents. He is entitled to non-exclusive use of the Common Areas for their intended purposes, but no use of any Lot or Common Area may unreasonably interfere with the property rights of other Owners or residents. The Owners rights under this Section are subject to:

- (A) The right and duty of the Association to levy assessments for common expenses against the Lots for the upkeep, maintenance, repair or betterment of the Common Areas and improvements thereon, and for the costs of operating the Association.

- (B) The right of the Association, by resolution of the Board of Directors, to dedicate or transfer or grant easements on, over, under, across or through any part of the Common Areas to any public agency, authority, or utility, for such purposes, and subject to such conditions, as may be determined by the Board. No such easement or the permitted uses of the easement shall materially interfere with the rights of the Owners to use the Common Areas.
- (C) The right of the Association to grant the right to Owners use of portions of the seawall for the purpose of maintaining a boat dock and/or boat slip over the waters adjacent to the seawall as set forth in Section 11.2 below.
- (D) Reasonable rules and regulations promulgated by the Association.

3.3 Partition, Separation Of Interests. There shall be no judicial partition of the Common Areas, except as expressly provided elsewhere herein, nor shall any Owner or any other person acquiring any interest in the Association, or any part thereof, seek judicial partition thereof. Nothing herein is intended to prevent judicial partition of any Lot and Living Unit owned in contingency. The ownership of a Lot, and ownership of the Living Unit constructed thereon, may not, however, be separated or separately conveyed, nor may any person who is not an Owner of at least one Lot and Living Unit hold membership in the Association.

3.4 Duration of Covenants. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association and by any Owner, their respective legal representatives, heirs, successors and assigns in perpetuity.

4. EASEMENTS. Each of the following easements and easement rights is a covenant running with the land, and notwithstanding any other provision of this Declaration, may not be revoked and shall survive the exclusion of any land from the Association. Any lien encumbering these easements is automatically subordinate to the rights of the Lot Owners with respect to such easements. Each Lot is subject to an easement in favor of all other parts of the Association for the location of utilities, for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Association. The parts of the Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the Owners, and each Owner has a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and rules of the Association.

4.1 Easements to Use. All Owners shall have a non-exclusive easement to use and enjoy the Common Areas, subject to the terms of the Governing Documents, including parking and traffic regulations adopted by the Association, payment of use or access fees or other charges reasonably imposed by the Association and subject to any restrictions or limitations contained in any instrument conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to the Governing Documents. An Owner who leases his or her Parcel shall be deemed to have delegated all such rights to the lessee of the Parcel. All Common Areas shall be maintained by the Association in such manner that its use and enjoyment as open space will not be diminished or destroyed. No Common Areas shall be developed except for use by Owners as open space.

4.2 Utility And Other Easements. The Association has the power, without the joinder of any Owner, to grant, modify or move easements such as water, sewer, electric, gas, cable television, waste pickup and hauling, and/or other utility, service or access easements, and to relocate any existing easements in any portion of the Association, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Association. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company service provider, or governmental agency to which any such utility-related equipment or installations are to be so transferred.

4.3 Ingress and Egress. A non-exclusive easement exists in favor of each Owner and occupant, and their respective guests, tenants, contractors, licensees and invitees for pedestrian traffic over, through, and across the sidewalks, streets, paths, walks, and other portions of the Common Areas intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across any parts of the Common Areas that are or may be paved or intended for such purposes, to provide ingress from and egress to the public ways.

4.4 Drainage. A perpetual, non-exclusive easement exists in favor of the Association and its employees, agents, contractors or other designees for the use of drainage areas established throughout Stella Maris, and an easement for ingress, egress, and access to enter any portion of Stella Maris in order to construct, maintain or repair, as necessary, any drainage areas and improvements thereon specifically including, without limitation, access over and across portions of the Common Areas by utility companies. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

4.5 Easement for Encroachment and Overhang. There shall be a reciprocal appurtenant easement for encroachment and overhang between adjacent Lots. Such easement shall be for roof overhangs, and other improvements which were unintentionally placed or have settled or shifted. The easement shall be for a distance of not more than five (5) feet, as measured from any point on the common boundary between the adjacent Lots, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment of anything other than an overhang exist if such encroachment occurred due to willful conduct on the part of an Owner.

4.6 Additional Easements. The Board of Directors shall have the right to execute, without further authorization, such grants of easement or other instruments as may from time to time be desirable for the development of the Property.

5. **ASSOCIATION; PURPOSES; POWERS.** The administration and management of the Stella Maris Master Homeowners' Association, Inc., a Florida corporation not for profit, shall perform its functions pursuant to the following:

5.1 **Powers And Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 617 and 720, Florida Statutes, particularly Sections 720.301 through 720.312, Florida Statutes, as they may be amended from time to time. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Association. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual Owner or class of Owners to bring any action which may otherwise be available.

5.2 **Board of Directors.** Except as otherwise expressly provided by law or by the Governing Documents the Association acts through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

5.3 **Articles Of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "D".

5.4 **Bylaws.** The Bylaws of the Association are attached as Exhibit "E" to this Declaration, and may be amended from time to time.

5.5 **Determination Of Management.** The Association may contract with a manager or management agent to assist the Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, keeping of records, and enforcement of covenants and rules, with funds made available by the Association for such purposes. The Association and its officers however, retain at all times the powers, duties, and non-delegable responsibilities imposed by Sections 720.301-720.312, Florida Statutes, as amended from time to time, and by the Governing Documents.

5.6 **Members.** Every person or entity who is a record Owner of a fee simple interest in any Lot shall be a member of the Association, as further provided in the Bylaws. Membership is appurtenant to, runs with, and cannot be separated from, the real property ownership interest upon which it is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

5.7 **Termination Of Membership.** Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

5.8 Association As Owner of Lots. The Association has the power to purchase Lots and to acquire and hold, lease, mortgage and convey them. The Association has the right to purchase a Lot at a foreclosure sale resulting from the Association's foreclosure of its lien for unpaid assessments or charges (including fines), or to take title by deed in lieu of foreclosure. However, the acquisition of any Lots not resulting from the Association's foreclosure action, must have the prior approval of a majority of the voting interests of the Association present in person, by the procedures in Section 3.11 of the Bylaws or voting at a special meeting called for the purpose.

5.9 POI Association. Each Owner is also a member of The Association for Port of the Islands, Inc., a Florida not-for-profit corporation, its successors and assigns (the "POI Association") so long as such corporation exists. The POI Association is charged with the responsibility of enforcing the Declaration of General Protective Covenants and Restrictions recorded in O.R. Book 1144 at Page 1164 *et seq.* of the Public Records of Collier County, Florida, as amended from time to time. Membership in The Association of Port of the Islands, Inc. and the right to vote in Association affairs as set forth in the POI Association's Articles of Incorporation and Bylaws, which rights shall be acquired and exercised as provided therein. The Association shall collect assessments and other monies owed to the POI Association by Owners, if any. In the event any amount owed the POI Association is not timely paid, the Association shall have the right to enforce its rights against the Owner(s) whose payment is not received.

6. ASSESSMENT FOR COMMON EXPENSES. The Association has authority to levy assessments against the Lots to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Common Areas and all improvements thereon, the costs of providing insurance for the benefit of the Association, its Directors and officers, and its members; the expenses of carrying out the powers and duties of the Association, and any other expense, whether included in the foregoing or not, that is expressly designated as a common expense in this Declaration or in the Bylaws.

6.1 Covenants. Each Owner of a Lot, and each subsequent Owner of any Lot (including a purchaser at a judicial sale), by acceptance of a deed or other instrument of conveyance, whether it is so expressed in the deed or instrument of conveyance or not, is deemed to covenant and agree to pay to the Association:

- (A) The Lot's pro rata share of quarterly assessments based on an annual budget of common expenses adopted by the Board of Directors;
- (B) The Lot's pro rata share of special assessments levied for capital improvements or other expenses that cannot be paid from the regular assessments;
- (C) Service charges and other fees (including fines) imposed against, or payable by, less than all of the Lots, as authorized elsewhere in this Declaration, in the Bylaws of the Association, or the Rules and Regulations of the Association.

Assessments are established and collected as provided herein and in the Bylaws, and are due and payable the first day of each calendar quarter. The obligation to pay the assessments and other charges described above, together with late payment fees, interest, costs, and reasonable attorney's fees incurred in the collection process, shall bind each Lot in the hands of its Owner, and his heirs, devisees, personal representatives, successors and assigns. Except as otherwise

provided, whether title to a Lot or Living Unit is transferred for any reason, the new Owner is jointly and severally liable with the previous Owner for all assessments and other charges that are unpaid at the time of the transfer, regardless of when the obligation was incurred, without prejudice to any right the new Owner may have to recover from the previous Owner any such amounts the new Owner is required to make. No Owner may avoid personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by waiving use rights, or by abandoning the Lot.

6.2 Shares Of Assessments. Each Lot and the Owner thereof shall be liable for an equal share of annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots included within the Neighborhood. There are fifty (50) Lots, therefore each Lot and the Owner thereof is liable for one-fiftieth (1/50) of the annual and special assessments. Except by operation of law, no Owner may be excused from the payment of assessments unless all Owners are similarly excused.

6.3 Establishment Of Liens To Secure Payment. All assessments, charges and other sums due the Association in accordance with the foregoing, together with any late payment fees, interest at the highest rate allowed by law, and costs of collection (including, but not limited to costs and reasonable attorney's fees) create a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made, and they are also the personal obligation of the Owner of each Lot and Living Unit at the time they came due. This lien relates back to the date this Declaration was originally recorded, and is superior to any Homestead rights the Owner may have. The lien is activated by recording a Claim of Lien in the public records of the County, setting forth the amounts then past due and the due dates, as of the date the Claim of Lien was recorded. The recorded Claim of Lien secures payment of all unpaid assessments and charges due at the time of recording (including late payment fees, interest, costs and attorney's fees as provided above), as well as all assessments and charges that subsequently come due, until the lien is satisfied or a final judgment of foreclosure is obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

6.4 Priority Of Liens. Except as otherwise provided by law, the Association's lien for unpaid assessments and other charges is subordinate and inferior to that of any recorded First Mortgage (which means any recorded mortgage with first priority over other mortgages), unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and take priority over, any other mortgage regardless of when recorded, as well as all other recorded liens except federal tax liens and liens for unpaid property taxes. A lease of a Living Unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or other charge coming due after taking title. Any unpaid assessment or other charge which cannot be collected by reason of this Section shall be treated as a common expense, collectable from all Lots, including the Lot as to which the foreclosure (or deed in lieu of foreclosure) occurred.

6.5 Collection Of Assessments. If any Owner fails to pay any assessments, other charge, or installment thereof, within fifteen (15) days after the due date, the Association shall have any or all of the following remedies, to the fullest extent permitted by law, which remedies are cumulative, so they are not in lieu of, but are in addition to, all other remedies available.

- (A) To charge interest at the highest rate allowed by law on the amount of the assessment or other charge, from the due date until paid.
- (B) To impose a late payment fee in an amount set by the Board which shall not exceed the amount allowed by law.
- (C) To file an action in equity to foreclose the lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association in the same manner as provided in Section 718.116, Florida Statutes, as amended from time to time, for the foreclosure of liens upon condominium units for unpaid assessments.
- (D) To bring an action at law for a money judgment against the Owner without waiving any foreclosure rights of the Association.
- (E) To the extent lawful, to suspend the voting rights of the Owner in Association matters until the Owner's account is current.
- (F) To deny Association approval of any proposed lease of the Owner's Living Unit.
- (G) To accelerate the due date for the entire remaining unpaid amount of the annual assessment against the Owner's Lot for the remainder of the fiscal year, notwithstanding any provision of the Governing Documents calling for installment payments of annual assessments.

6.6 Estoppel Certificate. The Association shall, within fifteen (15) days after receiving a written request for same, furnish to any Owner, purchaser or mortgage lender a certificate in writing signed by an agent or officer of the Association, setting forth whether all assessments and charges against the Owner's Lot have been paid, and itemizing any that have not been paid. Any person, except the Owner, who relies on the certificate shall be protected thereby.

7. ARCHITECTURAL AND AESTHETIC CONTROL No building, structure, pool or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, change of exterior color or other work which in any way materially alters the exterior appearance of any structure, Lot or Common Area be performed without the prior written approval of the Board of Directors of the Association. With respect to landscaping, the planting of bushes or plants that are commonly accepted within the neighborhood is not a "material" alteration that requires Board approval. (For example, planting flowers in an existing bed does not require approval, however planting bushes to create a barrier hedge does require approval.) In obtaining said written approval, Owner, or any other person applying, shall comply with all applicable requirements and procedures of the governing Documents. Refusal of approval for plans and specifications may be based on any reason including purely aesthetic reasons.

7.1 Powers and Duties. The architectural and aesthetic review and control functions of the Association shall be administered and performed by the Board of Directors. The Board shall have the power and duty to:

- (A) Propose the adoption, modification or amendment of written Architectural/Aesthetic Criteria, which shall set forth such things as landscape material, colors and materials which the Board finds acceptable. Notice of any adoption, modification or amendment to the Architectural/Aesthetic Criteria, including a verbatim copy of such adoption modification or amendment, shall be mailed to each member of the Association at least fourteen (14) days prior to the meeting at which such adoption, modification or amendment is acted upon;
- (B) Approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading, excavation, alters the exterior appearance of any structure, Lot or Common Area, except that the Board shall only have authority to approve or disapprove the location and dimensions parallel to the seawall of a boat dock installation or alteration;
- (C) Adopt a procedure for inspecting approved changes during and after construction to insure conformity with approved plans.
- (D) Set a time limit during which the approved changes must be completed.
- (E) Enact regulations regarding the appearance of Lots and adjacent common areas during the construction or renovation period, which regulations may include but are not limited to the placement of dumpsters and building materials.
- (F) Appoint an Architectural Control Committee to make recommendations to the Board regarding architectural decisions, however, the Board's decision on the matter shall be final.

8. MAINTENANCE; IMPROVEMENTS

8.1 Maintenance Of Common Areas. The Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements constructed on the Common Areas, including, but not limited to all landscaping, sprinkler pipes and systems, paving drainage structures, walkways, seawalls, retaining walls, recreation facilities, private streets, common area lighting fixtures and appurtenances, entrance features and other structures, except public utilities, all such work to be done as ordered by the Board of Directors or its designee. Maintenance of lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. The Association, its successors and assigns, shall have a perpetual, non-exclusive easement for ingress and egress over, upon and across all portions of the Properties and to excavate thereon in connection with the maintenance of sprinkler pipes and systems to the extent necessary for the performance of the work to be performed pursuant to this Section; provided, however, that the party causing any such excavations restores disturbed areas as nearly as practicable to the condition thereof immediately prior to such excavations.

8.2 Maintenance Of Residences, Lots and Boat Docks.

(A) **By the Association.** The Association shall maintain, repair and replace the roofs of the Residences, keeping the same in a condition comparable to the condition of such improvements at the time of their initial construction except for normal wear. For the purposes of this Section the "roof" shall mean the sheeting up to the tile (i.e. all materials under the sheeting, including the trusses, are not required to be maintained, repaired or replaced by the Association). Additionally, the Association shall be responsible for the painting of the exterior surfaces of the Residences. If in the course of executing its duties pursuant to this Section, the Association deems it necessary to make repairs to portions of the Residence required to be maintained, repaired or replaced by the Residence owner, then the Association may make the repairs. (For example, this may include stucco repairs or removal and replacement of hurricane shutters is required at the time the Residence exterior is painted.) Any expenses so incurred by the Association shall be assessed as a special charge against the Owner, together with reasonable attorney's fees and other expenses of enforcement. Such assessments shall become a lien on the Lot or Living Unit which may be foreclosed or otherwise collected pursuant to this Declaration, the Association Bylaws and Florida Law.

(B) **By the Residence Owner.** The owner of each Residence shall maintain, repair and replace, at his own expense, all portions of his Residence except those portions specifically required to be maintained, repaired and replaced by the Association. By way of illustration, and not limitation, the owner's responsibility includes stucco, doors, windows, glass and screens, door and window hardware, air conditioning compressors, pool and related equipment (if any), and any landscaping within an enclosure attached to the Residence. Painting of doors and walls, however, is an Association responsibility. Any owner who has installed a boat dock and/or boat lift attached or adjacent to the seawall shall be responsible for the maintenance, repair and replacement of the boat dock and/or boat lift. Nothing in this Section shall be construed to obligate an owner to replace their boat dock and/or boat lift in the event it is removed. However, in no event may an owner be allowed to keep a boat dock and/or boat lift adjacent to the seawall that is in disrepair. The determination as to whether a boat dock and/or boat lift is in disrepair shall be made by the Board taking into consideration whether the boat dock and/or boat lift constitutes a hazard to other property or residents or has a materially adverse affect on the appearance of the neighborhood.

8.3 Lawns and Landscaping. Lawns and Common Areas shall be maintained by the Association. All landscaping within any enclosure attached to the Residence on Lots shall be maintained by the Owner thereof and shall be kept in a neat and orderly fashion. Stone, gravel, or paving may not be used as a substitute for grass in a lawn.

8.4 Alteration of Lots or Residences by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his Lot or Residence, or in any manner materially change the exterior appearance of any portion of the Neighborhood, without first obtaining the written approval of the Board of Directors as set forth in Section 7 above. The Board of Directors may revoke or rescind the approval of an alteration or modification previously given, if it appears that the installation has had unanticipated material adverse effects on the Neighborhood or other Residences. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and his successors in title, shall be financially responsible for:

- (A) Insurance, maintenance, repair and replacement of the modifications, installations or additions;
- (B) The costs of repairing any damage to the common areas or other Residences resulting from the existence of such modifications, installations or additions; and
- (C) The costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the Residence for which the Association is responsible.

Expenses incurred by the Association for such items, if any, shall be assessed against the respective Lot as a special charge applicable to that Lot.

8.5 Party Walls. The Residence's Owners shall be responsible for the maintenance repair and replacement of party walls as set forth below.

- (A) **Definition.** Each wall which is built as part of the original construction of the Residence within the Neighborhood and placed on the dividing line between the Residence Sites for the use of more than one residence shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 8.5, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (B) **Cost of Repairs.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (C) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. This paragraph shall be deemed to be in addition to, and not in lieu of or to the exclusion of, the rights of the Association under Section 9 below.
- (D) **Weatherproofing.** Notwithstanding any other provision of this Section 8, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

- (E) **Contribution.** The right of any Owner to contribution from any other Owner(s) under this Section 8.5 shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (F) **Binding Arbitration.** In the event of any dispute arising concerning a party wall, such dispute shall be submitted to arbitration. Each Party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

8.6 Enforcement Of Maintenance. If the Owner of a Living Unit or Lot fails to maintain it as required herein or the Living Unit or Lot is not cared for and/or maintained in a manner acceptable to the Board of Directors and in general conformity with the standards of the community, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, or which has a materially adverse affect on the appearance of the neighborhood. Such action shall not be taken without advance written notice to the Owner. Any expenses so incurred by the Association shall be assessed as a special charge against the Owner, together with reasonable attorney's fees and other expenses of enforcement. Such assessments shall become a lien on the Lot or Living Unit which may be foreclosed or otherwise collected pursuant to this Declaration, the Association Bylaws and Florida Law. Notwithstanding the foregoing, the Association shall not have the right to enter the interior of the Living Unit except in the case of an emergency as necessary to prevent damage to another Living Unit or common areas.

8.7 Negligence; Damage Caused By Condition In Living Unit Or Lot. The Owner of each Living Unit or Lot shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents or lessees; but, unless the negligence is of such character as to evidence gross recklessness or willful or wanton disregard for life or property, the Owner shall be liable only to the extent that such expense is not met by the proceeds of insurance. If any condition, defect or malfunction existing within a Living Unit, whether caused by the Owner's negligence or otherwise, shall cause damage to the Common Areas or to other Living Units, the Owner of the offending Living Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not met by insurance. If one or more of the damaged Living Units is not occupied at the time the damage is discovered, the Association may enter without prior notice to the Owner and take reasonable actions to prevent the spread of damage. Any expenses so incurred by the Association shall be assessed against the Owner, together with reasonable attorney's fees and other expenses of enforcement.

8.8 Alterations and Additions to Common Areas and Association Property. The protection, maintenance, repair, insurance and replacement of the common areas and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association or any owner shall make no material alteration of, nor substantial additions to, the common areas or the real property owned by the Association costing more than twenty percent (20%) of the Association's annual budget in the aggregate in any calendar year without prior approval of at least a majority of the voting interests present and voting, in person or by proxy, at a meeting called for the purpose. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common areas or association property also constitutes a material alteration or substantial addition to the common areas, no prior unit owner approval is required.

8.9 Capital Improvements. Funds necessary for substantial capital improvements to the Common Areas in excess of fifteen percent (15%) of the total annual budget (including reserves) may be levied as special assessments by the Association only upon approval by a majority of the Board of Directors and approval by a majority of the voting interests present, in person or by proxy, and voting at a meeting or by ballot as provided in Section 3.11 of the Bylaws. Special assessments less than that amount may be levied by a majority of the Board alone, so long as the aggregate of the special assessments approved by the Board in each fiscal year do not exceed that amount.

8.10 Right of Entry and Limitation of Association's Liability. The Association shall have the right, but not the obligation, for itself and its designee, or any agent or employee to enter upon any Lot to carry out the provisions of this Declaration and same shall not constitute trespass. The Association shall not enter into the Living Unit on a Lot without the prior consent of the Owner, except in the case of an emergency. Notwithstanding its duty to maintain and repair portions of Residences and common areas, the Association shall not be liable to individual owners for personal injury or property damage caused by any condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons. The Association shall not be liable to any owner for repairing or replacing decorative surfaces, personal property or fixtures within the Residence, including but not limited to wallpaper, floor coverings, furniture and artwork.

9. INSURANCE OF LIVING UNITS; RECONSTRUCTION AFTER CASUALTY. In order to protect values and maintain the Neighborhood's appearance by minimizing the existence of partially or completely demolished residences for unreasonably long periods of time, and in order to protect all other Owners from the adverse effects of the negligence or imprudence of a few, the following provisions shall apply:

9.1 Duty To Insure And To Reconstruct. Each Owner shall at all times maintain property insurance on his Living Unit and all other insurable improvements on his Lot in an amount equal to the replacement cost thereof taking into account local construction costs and property values as they may from time to time exist. If the Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner shall cause the removal of all debris within sixty (60) days and shall complete the repair or replacement of the damaged structure within one (1) year after the date that such damage or destruction occurred. All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements.

9.2 Failure To Insure. The Association has the right to require each Owner to produce proof of insurance. If an Owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the Owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become a special charge against the Lot and are due and payable by the Owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the Owner, in writing, that it has procured such insurance, and the costs thereof. Should the owner fail to carry the required insurance, the owner shall be liable for all damages that would have been covered by the policy had it been in place at the time of a loss, including any item for which the Association has maintenance responsibilities as provided in this Declaration.

9.3 Failure To Reconstruct. If the Owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.1 above, the Association shall give written notice to the Owner of his default. If the Owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the Association mailed such notice, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to remove all debris and damaged improvements, or to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be at the sole discretion of the Board of Directors, the Owner of the Lot shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the Owner any costs not paid by insurance, and shall have a lien on the Lot and Living Unit to secure payment.

9.4 Association's Right Of Entry. For the purpose of performing the duties imposed by this Section 9, the Association, through its duly authorized agents and employees, has the right, after written notice to the Owner, to enter upon the Lot at reasonable hours and perform such duties.

9.5 Deductible. The party responsible for procuring insurance on an item must pay the deductible in the event of a loss involving that item, regardless of who may be responsible to maintain, repair or replace that item as provided in this Declaration.

10. ASSOCIATION INSURANCE.

10.1 Duty And Authority To Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the Owners without naming them, and their mortgagees.

10.2 Required Coverage. The Association shall maintain adequate liability insurance and casualty insurance covering buildings and other insurable improvements (if any) within the Common Areas, with coverage in amounts as determined annually by the Board of Directors; such insurance to afford the following protection:

- (A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism, and malicious mischief, and other hazards covered by what is commonly referred to as an "all risk" property contract.
- (B) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the Owners as a group to any single Owner.
- (C) **Fidelity Bonding.** Adequate fidelity bond coverage for all individuals having control of or access to Association funds.
- (D) **Directors and Officers Liability.**

10.3 Optional Coverage. The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and Owners. Some common examples are Flood Insurance; Broad Form Comprehensive General Liability Endorsement; and Medical Payments.

10.4 Descriptions Of Coverage. All Association insurance policies shall be available for inspection by Owners upon request.

10.5 Waiver Of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogate as to any claim against Owners, the Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

10.6 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

10.7 Distribution Of Proceeds. Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

10.8 Association As Agent. The Association is hereby irrevocably appointed as the agent for each Owner, to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

11. GENERAL COVENANTS AND USE RESTRICTIONS.

11.1 Use Restrictions. The Lots in the Association shall be used for single family residences and for no other purposes. This Section is intended to prohibit commercial or business activity by an Owner or occupant of a Living Unit which would noticeably change the residential ambiance of the neighborhood, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the neighborhood by persons making deliveries, pick-ups, employees or other business associates, or customers and clients. No Lot or portion thereof shall be conveyed or used as a Time-Share Property or as part of a Time-Share Plan as those terms are defined under Chapter 721, Florida Statutes.

11.2 Boat Docks and Boat Lifts. At the time that the Seawall Property is subjected to this Declaration, it has attached to it and adjacent to it boat docks and/or boat lifts, that have been constructed and installed by the Owners of Lots, at their sole expense and for their sole use. Those boat docks and/or boat lifts were installed in areas leased by the Lot Owners from the L.L.C. Any Owner who has constructed and installed a boat dock and/or boat lift, and their successors in interest, shall have the right to keep the dock and/or lift in its current location with its current dimensions (i.e. in the previously leased areas). Additionally, the owner shall have the right to maintain, repair and replace the dock and/or lift in its current location and dimensions. However, if an Owner chooses to remove the boat dock and/or boat lift and abandons the previously leased area, the Association may limit reconstruction of that boat dock and/or boat lift to within the location that lies within an extension of the rear lot lines for that Owner's Lot. [For the purpose of this Section an owner has abandoned their previously leased area if the area is not utilized by the Owner for a period of more than three (3) months or the Owner has indicated in writing the intention to abandon the area. Except that the area previously leased by the Owner of Lot 69 may only be

abandoned with the written consent of the Owner of Lot 69.] The following restrictions shall also apply to the boat docks and/or boat lifts connected to or adjacent to the Seawall Property.

- (A) **Unit Owner Responsibilities.** Each Owner who has a boat dock and/or boat lift shall be responsible to maintain the boat dock and/or boat lift and his boat in a clean and safe condition. It shall be the Owner's responsibility to maintain repair and replace their boat dock and/or boat lift as set forth in Section 8.2 (B) above.
- (B) **Dock Alterations.** Owners shall make no changes to the location of pilings, lifts or docks without the written consent of the Board of Directors, except for installation of bits, cleats, rings and dockline, which the owners may install at their own expense. No Owner may install or alter a boat dock, boat lift or piling in such a manner that will unreasonably restrict the docking, mooring, access, or navigation of another owner's boat to or from an existing boat dock and/or boat lift. Notice of any Board Meeting at which the Board will consider consenting to an Owner's request to change to the location of pilings, lifts or docks, must be given to the Owners of any adjacent Lot not less than ten (10) days prior to the meeting. The adjacent Owners shall have the right to comment on the requested change.
- (C) **Restrictions.** Only Owners, tenants, and members of the family who normally reside in the Living Unit may keep a boat at the Property. All walkways and dock areas shall be kept clear except when loading, unloading and working on the boat. Water hoses and boat lines shall be neatly placed and coiled when not in use. Rubbish, bottles, cans and other debris shall not be thrown overboard in the dock area. No one may sleep overnight or live aboard any boat, or cook with an open flame while it is docked at the Seawall Property. Engines and motors shall not be run unnecessarily while at the dock. Boats shall be properly secured to pilings, cleats and rings by their lines. No boat dock and/or boat lift shall be used for any commercial purpose. Each owner and tenant shall be responsible for securing the boats and other personal items kept in their boat dock and/or boat lift in the event of inclement weather.
- (D) **Common Area Docking.** There are areas along the seawall that were not leased or otherwise utilized by Owners for docking boats (i.e. more particularly portions of the Seawall Property abutting the side yards of Lots 41 and 49, except that area previously leased by the Owner of Lot 49, unless or until that area is abandoned as defined above). These areas may be used by Owners and their house guests for the temporary or transient docking of boats. No boat may be docked in these areas for any period of time exceeding one (1) week without the prior written permission of the Board. The Board may in its discretion further regulate the docking of boats in these common areas, so long as such regulations do not conflict with the governing documents.

11.3 Parking and Storage of Motor Vehicles.

- (A) No commercial vehicle of any kind may be parked in the Neighborhood unless kept fully enclosed inside a structure, except for service vehicles temporarily present to provide services to the Living Units, Lots or Common Areas.

- (B) No boat, trailer of any kind, semitrailer, house trailer, camper, mobile home, motor home, bus, truck, abandoned or inoperative, or unlicensed vehicle shall be permitted to be parked, kept or stored on the Properties unless kept fully enclosed inside a structure, except same may be temporarily parked on private driveway for short periods, but in no event more than seventy-two (72) hours.
- (C) No motor vehicle shall be parked anywhere other than on paved areas designated for that purpose, or in garages. Parking on lawns, across walkways, Common Areas or landscaped areas is prohibited. Motor vehicles may not be parked overnight on the roads in the Neighborhood.
- (D) No motor vehicle shall be used as a domicile or residence, either permanent or temporary while in the Neighborhood.
- (E) The following definitions shall apply for purposes of this Section:
- (i) "Abandoned or inoperable" means any vehicle that has not been driven under its own propulsion for a period of three (3) weeks or longer, provided however, this shall not include vehicles parked in an enclosed garage or operable vehicles left on the lot while on vacation.
 - (ii) "Boat" means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons, or personal property.
 - (iii) "Bus" means all vehicles of any kind whatsoever, manufactured, designed, marketed or used as a bus, for transport of greater number of passengers or goods than automobiles are customarily manufactured, designed, marketed or used to carry, but excluding vehicles manufactured, designed or marketed as full-size passenger vans or "minivans."
 - (iv) "Camper" means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property, including conversion vans in excess of twenty feet (20') in length.
 - (v) "Commercial Vehicle" means all vehicles of every kind whatsoever, which from viewing the exterior of the vehicles or any portion thereof, shows or tends to show any tool boxes, commercial markings, signs, displays, or otherwise indicates a commercial use and specifically includes, but is not limited to makers such as taxi cabs, or advertising for any business, retail operation, food service establishment, trade or profession, or its exterior shows signs of use in commercial applications such as roofing tar, paint stains or cement on its body.
 - (vi) "Mobile Home" means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

- (vii) "Motor Home" means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and/or full cooking facilities shall be considered motor homes, including conversion vans in excess of twenty feet (20') in length.
 - (viii) "Trailer" means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.
 - (ix) "Truck" means all vehicles of every kind in excess of three-quarter (3/4) ton rated weight-carrying capacity which are manufactured, designed, marketed or used for transporting goods of any nature. "Truck" shall include, but shall not be limited to "step vans", "panel trucks" or "cargo vans" of any weight, or size; provided, however, that the term "Truck" shall exclude "sport utility vehicles", "mini-vans" or "conversion vans".
- (G) If the Board of Directors is notified, in writing, of a violation of this provision, it shall take such further action as deemed necessary under the circumstances, including towing the vehicle. All expenses associated with enforcing compliance with this provision shall be borne by the Owner of Unit which has violated this provision (whether it be by the Owner, his guest, invitee, tenant, lessee or tenant's guests), including towing charges, storage expenses, costs and attorney's fees incurred by the Association. Such charges, if unpaid after thirty (30) days of demand, shall be assessed as an individual assessment against the Living Unit and collectable in the same manner as any other assessments, including lien and foreclosure. The remedies provided herein are cumulative and in addition to any other remedy provided in the Declaration, Association's Bylaws, Rules and Regulations, or Florida Law.

11.4 Garages. No garage shall ever be permanently enclosed or converted to other uses, including without limitation use as a living area.

11.5 Trash. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse. Solid containers such as the trash and recycling receptacles provided by Collier County for such purposes are deemed to be suitable. However, plastic garbage bags are not suitable. All such receptacles shall be screened from public view and from the wind, and shall be protected from animal and other disturbances.

11.6 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations.

11.7 Nuisance. No obnoxious or offensive activity (including but not limited to those which produce obnoxious or offensive lights, sounds or odors) shall be carried on upon any Common Area, Lot or in any Living Unit, nor shall anything be done that is or may become a reasonable source of annoyance or nuisance to other residents. The Board of Directors shall have the right and the power in the exercise of its reasonable discretion to determine what activities or uses constitute nuisances or obnoxious or offensive activity.

11.8 **Pools.** No above ground pools shall be erected, constructed or installed on any Lot.

11.9 **Fences.** No fence, wall or other structure shall be erected on any Lot except as approved in writing by the Board of Directors of the Association.

11.10 **Playground and Basketball Equipment.** No jungle gyms, swing sets, or other playground equipment, including, but not limited to, basketball hoops and backboards shall be permitted on any Lot except as approved in writing by the Board of Directors of the Association.

11.11 **Garage Sales.** No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot, except for sales organized as a Neighborhood sale or as approved by the Board of Directors.

11.12 **Mailboxes.** Mailboxes and their supporting structures shall be substantially uniform in style, appearance and location, and are subject to regulation by the Board.

11.13 **Television, Radio Equipment, Flagpoles And Other Outdoor Antennas.** No outside antennae, satellite receiving dishes, antenna poles, antenna masts, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennae shall be permitted, except as approved by the Board of Directors, or except as otherwise permitted by law as to satellite antennae less than twenty four (24) inches in diameter, antennae or aerials to receive over-the-air television broadcast, or antennae designated to receive multichannel, multipoint distribution service, which may be installed at a location approved in writing by the Board of Directors. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved in writing by the Board of Directors. An approved flagpole shall not be used to mount an antenna. It is the intent of this provision to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances, which is sometimes caused by the operation of ham radios, CB base stations or other high-powered broadcasting equipment.

11.14 **Temporary Structures.** No structure of a temporary character shall be constructed or used on any Lot. However, the temporary erection of a tent for special occasions may be allowed, but only after approval by the Board of Directors. No outdoor clothes washing, drying, hanging or storage shall be allowed where visible from the Common Areas or another Residence.

11.15 **Signs.** In order to maintain an attractive appearance, no sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted, or affixed in, on or upon any part of the Properties, by an Owner or occupant unless prior approval of the sign and its placement is obtained from the Board. This restriction includes, without limitation, signs of Realtors, politicians, contractors or subcontractors. The Association reserves the right to restrict the size, color, lettering, height, material and location of signs. The Association shall have the right to remove signs which fail to comply with the standards set by the Association. Notwithstanding the foregoing, each Owner may place a "For Sale" sign in the front and the back of the Lot, so long as those signs comply with the restrictions promulgated by the Association, if any.

11.16 **Wells and Other Water Sources.** Private wells are strictly prohibited, and canal water shall not be withdrawn for irrigation or any other purpose.

11.17 Appearance. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. Sanitary containers shall not be placed outside the Living Unit, except for a reasonable period of time for refuse pickup to be accomplished. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

11.18 Pets. The Owner of each Lot may keep no more than two (2) commonly accepted and domesticated household pets (such as cat, bird or dog) and tropical fish in the Living Unit. The pet must be carried under the Owner's arm, caged or leashed (with the leash held by a human) at all times while outside of the Living Unit or the Lot, in accordance with Collier County Ordinance 93-56, as amended by 94-10. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Properties. **Owners are responsible for the conduct of and the clean-up after their pet(s).** The Board of Directors may adopt further regulations regarding keeping or house of pet(s) upon the Properties. No reptiles, amphibians, poultry or livestock may be kept on the Properties. Pets shall not be left unattended in a garage or outside the interior portions of a Residence.

11.19 Miscellaneous Activity And Use Restriction. The following activity and use restrictions apply to all Owners, Lots and Common Areas.

- (A) The discharge of firearms is prohibited.
- (B) All personal property, including without limitation bicycles, mopeds, motorcycles and play equipment shall be stored in a Residence or a garage except when in use, and may not be left on driveways or Common Areas overnight. No unenclosed exterior storage area shall be permitted.
- (C) Each Owner and Member shall be required to adhere to the storm precautions promulgated by the Association, if any.

12. LEASING OF RESIDENCES: In keeping with the intent to develop a stable residential community, and prevent a motel-like atmosphere, the use and leasing of residential units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease his unit only in accordance with this Section.

12.1 Term of Lease and Occupancy During Lease Term. No lease may be for a period of less than six (6) months nor more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted unless the extension or renewal has been approved by the Board. No subleasing or assignment of lease rights by the lessee is allowed. No more than four (4) persons may occupy the Living Unit during the lease term.

12.2 Notice of Lease. An Owner intending to make a bona fide lease of his dwelling unit shall give to the Association notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease, together with the name and address of the intended lessee, a copy of the proposed lease and any other information concerning the intended lessee as the Association may require.

12.3 Approval of Lease Renewals. The Association shall have the right to approve all lease extensions or renewals. An owner intending to lease extend or renew a lease of his residential unit shall give to the Association written notice of such intention at least thirty (30) days prior to the first day of the extended or renewed period under the lease together with such information as the Board may reasonably require. After the required notice and all information requested have been provided, the Board shall have ten (10) business days in which to approve or disapprove the proposed lease extension or renewal. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

12.4 Failure to Obtain Approval. Any lease renewal or extension entered into without approval of the Association as required herein may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the owner.

12.5 Other Procedures. Forms for lease notification and applications for authority to extend or renew a lease shall be given to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The Board may in its discretion further regulate leasing procedures so long as the further regulations do not conflict with this Declaration.

12.6 Regulation by Association. All of the provisions of the Declaration, Bylaws, and the Rules and Regulations of the Association pertaining to use and occupancy shall apply to a lessee or guest to the same extent as against an Owner, and a covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Documents, designating the Association as the Owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. The costs associated with obtaining the tenant's compliance or with eviction of the tenant, including attorney's fees, shall be assessed against the Owner.

12.8 Delinquent Assessments During Lease Term. In the event an Owner of a Lot and/or Living Unit is and/or becomes delinquent in the payment of any assessments, fines or other charges and the Living Unit is subject to a lease, the Association shall be entitled to the payment of rent, directly from the tenant, until the delinquency is satisfied in full. Each lease shall provide or be deemed to provide that the rents shall be assigned and made payable directly to the Association in the event of a delinquency. The Association shall advise the tenant by certified mail, return receipt requested, directed to the address of the Living Unit, of its intent to exercise its option hereunder.

13. TRANSFERS OF OWNERSHIP OF LOTS. The transfer of ownership of a Lot shall be subject to the following provisions:

13.1 Forms Of Ownership.

(A) **One Person.** A Lot may be owned by one natural person whose acquisition of title has been approved to the extent and in the manner elsewhere provided herein.

- (B) **Two or More Persons.** Co-ownership of a Lot by two or more natural persons who are not husband and wife is not prohibited. The intent, however, is to allow the Lot Owner some degree of flexibility in estate, tax or financial planning; and such ownership will not be approved if the apparent effect is to allow an Owner to create circumstances where the Lot may be used as short-term transient accommodations for multiple families. If the Co-Owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant." The use of the Lot by other persons shall be as if the primary occupant were the only actual Owner. Any change in the designated primary occupant shall be treated as a transfer of ownership of the affected Lot by sale or gift, subject to the provisions in this Section. No more than one such change will be approved in any twelve (12) month period, unless caused by the death of the primary occupant.
- (C) **Ownership By Corporations, Partnership Or Trusts.** A Lot may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Lot may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or a corporation, partnership or other business entity as a Lot Owner shall be conditioned upon designation by the Owner of one natural person to be the "primary occupant". The use of the Lot by other persons shall be as if the primary occupant were the only actual Owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section. No more than one such change will be approved in any twelve (12) month period, unless caused by the death of the primary occupant.
- (D) **Designation Of Primary Occupant.** Within thirty (30) days after the effective date of this provision, each Owner of a Lot which is owned in the forms of ownership stated in preceding Subsections shall designate a primary occupant in writing to the Association. If any Lot Owner fails to do so, the Board of Directors may make the initial designation for the Owner, and shall notify the Owner in writing of its action. If the ownership of a Lot is such that the designation of a primary occupant is not required, the Lot Owner may, nevertheless, choose to designate one, subject to Board approval.
- (E) **Life Estate.** A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under the Section entitled "Types Of Transfers of Ownership" below. In that event, the life tenant shall be the only Association member for the Lot, and occupancy shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the Lot. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners under this Section above, for purposes of determining voting and occupancy rights.

13.2 Notice To Association. The Association must be notified no later than twenty (20) business days after a transfer of a Lot has taken place. The new owner shall provide the Association with a copy of their deed or other instrument by which they took title and provide the Association with any other information that is reasonably requested.

14. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every Owner, tenant, guest or other invitee shall at all times comply with all the covenants, conditions and restrictions of the Governing Documents including this Declaration, the Articles, Bylaws and Rules and Regulations. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the violation, except in emergencies. The proper interpretation and effect of the Governing Documents shall be as interpreted by the Board of Directors of the Association.

14.1 Legal Action. Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, conditions and restrictions. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

14.2 Entry By Association. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the land, any construction or violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal. Any costs and expenses incurred by the Association in abatement of any violations, including attorney's fees, shall be assessed against the Owner of said Lot, which assessments, if unpaid, shall become a lien on the Lot and foreclosed, or otherwise collected in the same manner as assessments for common expenses.

14.3 Fines. The Board may impose a fine or fines upon an Owner, tenant, guest, or other invitee for failure of the Owner, his family, guests, invitees, tenants, or employees to comply with any covenant, restriction, rule or regulation contained herein or promulgated pursuant to the Governing Documents.

- (A) **Notice.** The Association shall notify the Owner or person sought to be fined with at least fourteen (14) days notice of the opportunity for an appeals hearing.
- (B) **Appeals Hearing.** A hearing, if requested by the Owner or person sought to be fined, shall be held before a committee of at least three (3) members appointed by the Board, who are not officials, directors or employees of the Association, or the spouse, parent, child, brother or sister of any of the above. The committee, by majority vote, may recommend approval of the fine, dismissal of the fine, or a change in the amount of the fine.

- (C) **Amount Of Fine.** The Board of Directors may impose fines in amounts reasonably related to the severity of the offense and deemed adequate to deter future offences, not to exceed \$100 per violation, or such other maximum amount permitted by law. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, and thus may exceed in the aggregate, \$1,000 per violation, or such other maximum amount permitted by law.
- (D) **Collection Of Fines.** Fines shall be treated as an assessment due to the Association ten (10) days after written notice to the Owner of the imposition of the fine, as provided above. The filing of an appeal as provided above shall postpone the due date until three (3) days after the written decision of the appeals committee is served on the Owner.
- (E) **Application.** All monies received from fines shall become part of the common surplus.
- (F) **Nonexclusive Remedy.** Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. Outstanding fines, if unpaid after thirty (30) days from the date due, shall be assessed against the Owner of the Lot and/or Living Unit, which assessments may become a lien on the Lot and foreclosed or otherwise collected in the same manner as assessments for common expenses.

14.4 Suspension of Use Rights. The Association may also suspend use rights by following the procedures found in Section 14.3 for levying of fines.

14.5 Attorneys Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner, Director or Officer of the Association, or the Association to comply with the requirements of Chapter 720 of the Florida Statutes, the governing documents, or the Association's rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

15. AMENDMENTS OF DECLARATION

15.1 Amendments, Proposal. This Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

15.2 Amendments, Vote Required. Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved by the Association members in one or the two methods below.

- (A) Approval shall be granted if approved by at least two-thirds (2/3) of the voting interests of the Association who are present, in person or by proxy, and voting at any annual meeting or a meeting called for that purpose, provided that a copy of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendment has been given to the members in accordance with law.
- (B) Any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members. Approval shall be granted if at least two-thirds (2/3) of the members written consents are in the affirmative. If the requisite number of written consents is received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members. Nothing in this Section affects the rights of members to call a special meeting of the membership, as provided for in the Bylaws or by law. If the vote is taken by the method described in this Section, the list of owners on record with Secretary at the time of mailing the voting materials shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's records.

15.3 Amendments, Certificate, Recording, Effective Date. A copy of each amendment shall be attached to a certificate attesting that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Official Records where the Declaration was originally recorded, and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment is effective when the certificate and copy of the amendment are recorded in the Official Records of the County.

16. GENERAL PROVISIONS.

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

16.2 Waiver. Any waiver by the Association of any provisions of this Declaration or breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

16.3 Severability. If any section, subsection, sentence, clause, phrase or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

16.4 Headings And Capitalization. The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and do not affect the meaning or interpretation of the provisions of this Declaration.

16.5 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner in the records of the Association at the time of such mailing. The Owner bears the responsibility for notifying the Association of any change of address.

16.6 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its recorded exhibits. Its interpretation shall be binding upon all parties, unless it is wholly unreasonable. A written opinion rendered by Association legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

EXHIBITS TO CONSOLIDATED, AMENDED AND RESTATED DECLARATION

The following exhibit was recorded on May 21, 1996, together with the Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris at Official Record Book 2186, Page 0360 et seq., Public Records of Collier County, Florida. This exhibit, as previously amended to date, is hereby incorporated by reference as an exhibit to the attached Consolidated, Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris.

EXHIBIT "A" - LEGAL DESCRIPTION OF NEIGHBORHOOD

The following exhibit was recorded on May 21, 1996, together with the Declaration of Covenants, Conditions, Restrictions and Easements for the Stella Maris Single Family Community at Official Record Book 2186, Page 0414 et seq., Public Records of Collier County, Florida. This exhibit, as previously amended to date, is hereby incorporated by reference as an exhibit to the attached Consolidated, Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris.

EXHIBIT "A" - LEGAL DESCRIPTION OF NEIGHBORHOOD

In addition, the following Exhibit is being added to the attached Consolidated, Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris and is being recorded herewith:

**EXHIBIT "B" - LEGAL DESCRIPTION OF THE SEAWALL PROPERTY
EXHIBIT "C" - JOINDER BY OWNER OF SEAWALL PROPERTY**

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

**EXHIBIT "D" - ARTICLES OF INCORPORATION OF ASSOCIATION
EXHIBIT "E" - BYLAWS OF THE ASSOCIATION**

Exhibit "A"



*** OR: 2779 PG: 2190 ***

1500 Lakes Way, Naples, Florida 34110 Phone 941-542-0000 Fax 941-542-0001

HIM PROJECT #2001513

1/25/11

REF DWG #B-3190

PROPERTY DESCRIPTION

A PORTION OF TRACT C OF PORT OF THE ISLANDS (THE CAYS) PHASE II ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 21 AT PAGES 1 THROUGH 4 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGIN AT THE SOUTHWEST CORNER OF LOT 71 OF STELLA MARIS ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 26 AT PAGES 26 AND 27 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, THENCE RUN N 00°19'09"E, ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 104.98 FEET; THENCE RUN N.89°41'56"W, ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 828.98 FEET, THENCE RUN N.00°19'50"E., ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 340.55 FEET; THENCE RUN S 89°41'59"E., ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 803.57 FEET; THENCE RUN N.00°17'11"E., ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 39.39 FEET; THENCE RUN N 89°42'49"W FOR A DISTANCE OF 9.59 FEET TO A POINT ON THE BOUNDARY OF TRACT C OF PORT OF THE ISLANDS (THE CAYS) PHASE II ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 21 AT PAGES 1 THROUGH 4 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE RUN S.00°17'11"W., ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 29.69 FEET, THENCE RUN N.89°41'59"W., ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 803.56 FEET; THENCE RUN S.00°19'50"W., ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 360.55 FEET; THENCE RUN S 89°41'56"E., ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 828.56 FEET; THENCE RUN S.00°19'09"W., ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 94.68 FEET, THENCE RUN S.89°40'51"E. FOR A DISTANCE OF 10.01 FEET TO THE POINT OF BEGINNING; CONTAINING 0.483 ACRE, MORE OR LESS

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD

BEARINGS REFER TO THE WESTERLY BOUNDARY OF LOT 71 OF STELLA MARIS ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 26 AT PAGES 26 AND 27 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, AS BEING N.00°19'09"E.

HOLE, MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY Thomas J. Garris P.L.S. #3741
THOMAS J. GARRIS STATE OF FLORIDA

JOINDER BY OWNER OF SEAWALL PROPERTY

Stella Maris Seawall, L.L.C. is the sole owner of the property legally described in Exhibit "A" to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris by virtue of the Special Warranty Deed recorded at O.R. Book 2779, at Page 2188 in the Public Records of Collier County, Florida.

Stella Maris Seawall, L.L.C., a Florida Limited Liability Company, hereby consents to and joins in the execution of the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris, which consolidates, amends and restates the Declarations that were originally recorded as follows:

Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris was recorded in Official Record Book 2186, at Pages 0360 *et seq.*, of the Official Records of Collier County, Florida, and

Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris Single Family Community was recorded in Official Record Book 2186, at Pages 0414 *et seq.*, of the Official Records of Collier County, Florida,

for the purpose of subjecting the property legally described in Exhibit "A" to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris to the provisions contained therein, as they may be amended as set forth therein.

Dated this 11th day of June, 2002.

Witnesses:

[Signature]
Signature of Witness
Anja DePauw
Print name of Witness

[Signature]
Signature of Witness
Cheryl P. Kraus
Print name of Witness

OWNER OF SEAWALL PROPERTY:

STELLA MARIS SEAWALL, L.L.C.
[Signature]
James E. Morris, Managing Member

[Signature]
Dale M. Lambert, Managing Member

[Signature]
George H. Bond, Managing Member

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 11th day of June, 2002, by James E. Morris, Dale M. Lambert and George H. Bond as Managing Members of Stella Maris Seawall, L.L.C., a Florida Limited Liability Company, for and on behalf of the Limited Liability Company, who (choose one) () are personally known to me or () have produced FL ID cards as identification and did not take an oath.

 Anja C DePauw
My Commission CC946581
Expires June 18, 2004

[Signature]
Signature of Notary Public
ANJA C. DEPAUW
Print name of Notary Public (SEAL)
My Commission Expires: 06/18/04

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

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC.
(F/K/A STELLA MARIS MASTER ASSOCIATION, INC.)

Pursuant to Section 617.1007, Florida Statutes, the Articles of Incorporation of Stella Maris Master Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on May 14, 1996 are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1005, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.1006 and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Stella Maris Master Homeowners' Association, Inc. (formerly known as Stella Maris Master Association, Inc.), shall henceforth be as follows:

ARTICLE I

NAME. The name of the corporation formerly known as Stella Maris Master Association, Inc. shall be changed to Stella Maris Master Homeowners' Association, Inc., sometimes hereinafter referred to as the "Association."

ARTICLE II

PRINCIPAL OFFICE. The principal office of the corporation is located at, c/o 12734 Kenwood Lane, Suite 49, Fort Myers, Florida 33907. The principal office may be changed by the Board of Directors.

ARTICLE III

PURPOSE AND POWERS. This Association will not permit pecuniary gain or profit and will make no distribution of its income to its members, officers or Directors. It is a corporation not for profit organized on a non-stock basis for the purpose of establishing a corporate residential neighborhood homeowners association which will, subject to a Declaration of Covenants, Conditions, Restrictions and Easements recorded in the Public Records of Collier County, Florida, have the powers described herein. The Association shall have all of the common law and statutory power of a Florida corporation not for profit consistent with these Articles and with the Declaration of Covenants, Conditions and Restrictions to which these Articles shall be an exhibit; and it shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential neighborhood, subject to the Declaration, as it may from time to time be amended, including but not limited to the power to:

- (A) Exercise any and all powers, rights and privileges which a corporation organized under Chapters 617 and 720, Florida Statutes, may now or hereafter have or exercise; subject always to the Declaration, as amended from time to time;
- (B) Fix, levy, collect and enforce payment by any lawful means all charges, assessments or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property of the corporation;
- (C) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- (D) Borrow money, and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (E) Own, operate, maintain, and repair the Water Management Systems.

ARTICLE IV

MEMBERSHIP. Every person or entity who is a record Owner of a fee simple or a fractional undivided fee simple interest in any Lot which is subject, by covenants or record to the jurisdiction and powers of the Association (hereinafter referred to as a "Lot"), shall be a member of the Association. The foregoing is not intended to include persons and entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the aforesaid jurisdiction and powers of the Association. All membership rights and duties shall be subject to and controlled by the Declaration, which is in the form of a covenant running with the land.

ARTICLE V

VOTING RIGHTS. All members of the Association shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but the single vote for such Lot shall be exercised as they among themselves determined, and in no event shall more than one vote be cast with respect to any Lot.

ARTICLE VI

DIRECTORS.

- (A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors.
- (B) Directors shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

- (C) The business of the Association shall be conducted by the officers designated in the Bylaws.

ARTICLE VII

OFFICERS. The affairs of the Association shall be administered by a President, a Secretary and a Treasurer and such other officers as may be determined in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the Annual Meeting and shall serve at the pleasure of the Board of Directors.

ARTICLE VIII

TERM. The term of the Association shall be perpetual.

ARTICLE IX

BYLAWS. The Bylaws of the Association shall be adopted by the Board of Directors but may be altered, amended or rescinded by resolution adopted by a majority of the Board following the procedure for "Amendments" found in Article X of this document.

ARTICLE X

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

- (A) **Proposal.** Amendments to these Articles may be proposed by a majority of the Board or by petition to the Board signed by at least one-fourth (1/4) of the voting interests of the Association.
- (B) **Procedure.** A proposed amendment must be submitted to a vote of the members not later than next annual meeting for which proper notice can still be given.
- (C) **Vote Required.** Except as otherwise required by Florida law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by at least two-thirds (2/3) of the voting interests of the Association who are present, in person or by proxy, and voting at any annual meeting or a meeting called for that purpose, or if it is approved in writing by at least two-thirds (2/3) of the voting interest without a meeting, as authorized in the Bylaws, provided that notice of any proposed amendment must be given to all members of the Association, and the notice must contain the current wording of the Section and the full text of the proposed amendment.
- (D) **Effective Date.** An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE X

INDEMNIFICATION. To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved the following:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.
- (D) Wrongful conduct by Directors or officers in a proceeding brought by or on behalf of the Association. In the event of an out-of-court settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves the settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of all other rights to which a Director or officer may be entitled.

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

AMENDED AND RESTATED BYLAWS

OF

**STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC.
(F/K/A STELLA MARIS MASTER ASSOCIATION, INC.)**

1. GENERAL. These are the Amended and Restated Bylaws of Stella Maris Master Homeowners' Association, Inc. (formerly known as Stella Maris Master Association, Inc.), hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a homeowners association pursuant to Chapter 720 of the Florida Statutes. All prior Bylaws are hereby revoked and superseded in their entirety.

1.1 Principal Office. The principal office of the Association is c/o 12734 Kenwood Lane, Suite 49, Fort Myers, Florida 33907. The principal office may be changed by the Board of Directors.

1.2 Seal. The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

1.3 Definitions. Certain words and phrases used in these Bylaws are defined in the Declaration of Covenants, Conditions, Restrictions and Easements of Stella Maris (the "Declaration"), to which these Bylaws are recorded as an Exhibit, unless the context clearly requires a different meaning.

2. MEMBERS; VOTING RIGHTS. The members of the Association are the record Owner(s) of legal title to the Lots. If a Lot is subject to a contract for deed or a life estate, the contract vendee or life tenant, respectively, shall be deemed to be the Owner for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events:

(A) Approval by the Association for the transfer of ownership, if required by the Declaration (such approval is not required as of the effective date of these Amended and Restated Bylaws).

(B) Recording in the Public Records of a Deed or other instrument conveying or evidencing legal title to the new member.

(C) Delivery to the Association of a copy of the recorded Deed or other evidence of title.

BYLAWS

-1-

Exhibit "E"

(D) Delivery to the Association, if required, of a written designation of a primary occupant. Membership in the Association is appurtenant to, runs with, and cannot be separated from the real property interest upon which membership is based. Each members' share of beneficial ownership of the common surplus is the same as his share of liability for assessments, as provided in the Declaration.

2.1 **Voting Rights.** The members of the Association are entitled to one (1) vote for each Lot owned by them. The total number of votes equals the total number of Lots. There are fifty (50) Lots, therefore the number of voting interests is fifty (50). The vote of a Lot is not divisible. The right to vote may be suspended if a member is delinquent, in excess of ninety (90) days, in the payment of any monies due to the Association. If a Lot is owned by one natural person, his right to vote shall be established by the record title. If a Lot is owned jointly by two or more natural persons, regardless of whether they are acting as trustees, that Lot's vote may be cast by any one of the record Owners. If two or more Owners of a Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner of a Lot is not a natural person, the vote of that Lot shall be cast by the primary occupant of the Residence designated as set forth in the Declaration.

2.2 **Approval or Disapproval of Matters.** Whenever the decision or vote of a Lot Owner is required upon any matter, whether the subject of an Association meeting or not, the decision or vote shall be expressed or cast by any person authorized in Section 2.1 above to cast the vote of that Lot if present at an Association meeting, unless the joinder of all record Owners is specifically required.

2.3 **Termination of Membership.** Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member.

3. **MEMBERS' MEETINGS.**

3.1 **Annual Meeting.** The annual meeting of the members shall be held in Collier County, Florida, during the month of February or March each year on a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

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

- 3.3 **Notice Of Meetings.** Notice of meetings of the members, stating the time, date and place of the meeting must be mailed to the Owner(s) of each Lot at the address that appears on the books of the Association, or may be provided by personal delivery. The member bears the responsibility for notifying the Association of any change of address. The notice must be mailed or delivered at least fourteen (14) days before the date of the meeting. Unless the law or the governing documents expressly require otherwise, notice of special meeting must include a description of the purpose or purposes for which the meeting is called.
- 3.4 **Quorum.** A quorum at meetings shall be attained by the presence, either in person or by proxy, of a least thirty percent (30%) of the voting interests of the Association.
- 3.5 **Vote Required.** The acts approved by a majority of the votes cast at a meeting at which a quorum has been attained are binding upon all members for all purposes, except where a higher vote is required by law, or by any provision of the governing documents.
- 3.6 **Proxies.** Votes at a meeting may be cast in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and/or any lawful adjournment of that meeting. No proxy shall be valid longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid a proxy must be in writing, dated, signed by the person authorized to cast the vote, and specify the date, time and place of the meeting for which it is given. Proxyholders must be a members.
- 3.7 **Adjourned Meetings.** Any duly called meeting of the members may be adjourned, by the majority of the voting interests present, regardless of whether a quorum has been attained, and may be reconvened later at a specific time and place. When a meeting is so adjourned, it shall not be necessary to give formal notice of the time and place of its continuance, if that information is announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum has been attained.
- 3.8 **Order of Business.** The order of business at members meetings shall be generally as follows:
- (A) Determination of the existence of a quorum.
 - (B) Reading or dispensing with reading minutes from the last members meeting.
 - (C) Reports of Officers. (Financial Report)
 - (D) Reports of Committees.
 - (E) Election of Directors (Annual Meeting Only).
 - (F) Unfinished Business.
 - (G) New Business.
 - (H) Adjournment.
- 3.9 **Minutes.** Minutes of all meetings of the members and of the Board of Directors shall be kept in a businesslike manner, in a book or books, and must be available for inspection and copying by members or their authorized representatives at all reasonable times.

3.10 Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings, when not in conflict with the law or the governing documents. The President may appoint a Parliamentarian for assistance and advice, but the President's decision on questions of Parliamentary Procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11 Action By Members Without Meeting. Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting, if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting. If the requisite number of written consents is received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall meet to tabulate the votes and send written notice of the action taken to all members. Nothing in this Section affects the rights of members to call a special meeting of the membership, as provided for in these Bylaws or by law. If the vote is taken by the method described in this Section, the list of Owners on record with the Secretary at the time of mailing the voting materials shall be the list of qualified voters. The written consents used to authorize an action without a Meeting shall become part of the Association's records.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association is by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the members only when specifically required.

4.1 Number And Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be five (5). To maintain experienced Board members, Directors will be elected for staggered terms. The first election held following this revision of the Bylaws, the Director's terms will be determined by the votes received for each Director. Of the Directors elected; the three (3) receiving the most votes will serve a two (2) two year term, while the other two will serve a (1) year term. The second election held following this revision of the Bylaws, and thereafter, all Directors will be elected for a (2) year term. Each Director's term ends at the final adjournment of the annual meeting at which his successor will be duly elected, or at such other time as may be provided by law. Directors shall be elected by the members as described in Section 4.3 below, or in the case of vacancy, as provided in Section 4.4 below.

4.2 Qualifications. Each Director must be a member of the Association or primary occupant for a Lot.

- 4.3 Nominations And Elections.** At each annual meeting the members shall elect as many Directors as there are regular terms of Directors expiring or vacancies to be filled. The nominating committee, if any, shall submit its recommended nominees for the office of Director on the floor at the annual meeting, at which time any other eligible person may also be nominated as a candidate. Directors shall be elected by a plurality of the votes cast at the annual meeting. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected. The candidates receiving the highest number of votes shall be declared elected, except that a run-off shall be held to break a tie vote. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative.
- 4.4 Vacancies On The Board.** If the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected by a majority of the remaining Directors, though less than a quorum. The successor shall hold office for the remaining unexpired term.
- 4.5 Removal Of Directors.** Any Director may be removed from office, with or without cause, by the vote or agreement in writing of a majority of the voting interests. The notice of a meeting of the owners to recall one or more Directors must name the specific Director(s) sought to be removed, and a separate vote for each Director sought to be removed shall be taken. Where removal is sought by written agreement, a separate agreement is required for each Director to be removed. Any Director who is removed from office is not eligible to stand again for election to the Board, or be appointed to the Board, until the next annual election. A Director who is removed from office shall turn over to the Association within 72 hours any and all records and other property of the corporation in his possession. If a Director who is removed does not relinquish his office or turn over records as required, the circuit court in the county may summarily order the Director to relinquish his office and turn over corporate records upon application of any Owner. In any such action, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.
- 4.6 Board Meetings.** A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all Board meetings must be posted in a conspicuous place at least forty-eight (48) hours in advance of every meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessment. Any Owner may tape-record or videotape meetings of the Board of Directors and meetings of the members. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.
- 4.7 Waiver Of Notice By Directors.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

- 4.8 **Quorum Of Directors.** A quorum at a Board meeting exists only when a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee by means of a conference telephone call or other similar communicative arrangement whereby all persons present at the meeting site can hear and speak to all other persons, and participation by this means is deemed equivalent to presence in person at a meeting.
- 4.9 **Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum is then present, any business that might have been transacted at the meeting originally called may be transacted without further notice.
- 4.10 **Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall preside at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.
- 4.11 **Vote Required.** The acts approved by a majority of the Directors present and voting at a Board meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the governing documents or by law. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in electing officers. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the point of view that prevails on any question, unless he voted against such action or abstained from voting because of an asserted conflict of interest, which must be noted in the minutes.
- 4.12 **Directors' Fees and Reimbursement Of Expenses.** No compensation or fees shall be paid to Directors for their service as Directors. Directors may be reimbursed for out-of-pocket expenses related to the proper discharge of their respective duties.
- 4.13 **Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. The meetings of any committee that is vested with the authority to make a final decision regarding the expenditure of Association funds and any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the Association must be conducted with the same formalities as required for meetings of the Board.
- 4.14 **Emergency Powers.** In the event of an "emergency" as defined in Section 4.14(G) below, the Board of Directors may exercise the following emergency powers, and any other emergency powers authorized by Section 617.0207, Florida Statutes (1998), as amended from time to time.
- (A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

- (B) The Board may relocate the principal office or designate alternative principal offices or authorize the offers to do so.
- (C) During any emergency the Board may hold meetings with notice given only to those Directors with who it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.
- (D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association and shall have the rebuttable presumption of being reasonable and necessary.
- (E) Any officer, Director, or employee of the Association, acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws, shall incur no liability for doing so, except in the case of willful misconduct.
- (F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.
- (G) For purposes of this Section 4.14, an "emergency" exists only while the Neighborhood, or the immediate geographic area in which the Neighborhood is located, is subjected to:
 - (1) a state of emergency declared by law enforcement authorities;
 - (2) a hurricane warning;
 - (3) a partial or complete evacuation order;
 - (4) designated by federal or state government as a "disaster area;" or
 - (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Neighborhood, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

5. **OFFICERS.** Officers are elected by a majority of the Board at its first meeting after every election, and serve at the pleasure of the Board. The executive officers of the Association shall be a President, a Vice-President, a Treasurer, and a Secretary, all of whom must be Directors, and shall be elected annually by the Board of Directors. Any officer may be removed from office, with cause, by a majority of the Directors at any meeting where such action is identified in the Agenda. Any person, except the President, may hold two or more offices. The Board of Directors may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

- 5.1 **President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be *an ex-officio* member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.
- 5.2 **Vice-Presidents.** The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall prescribe.
- 5.3 **Secretary.** The Secretary shall attend meetings of the Board of Directors and meetings of the members and shall be responsible for the recording of all votes, and the minutes of all proceedings, in a book to be kept for the purpose, and shall perform like duties for standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the governing documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is designated.
- 5.4 **Treasurer.** The Treasurer is responsible for the safekeeping of Association funds and assets, budget preparation, and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, a manager or a management company, if one has been designated. If one has been designated, then it shall be the Treasurer's duty to oversee that such matters are tended to in an efficient and business-like manner.
- 5.5 **Compensation Of Officers.** No compensation shall be paid to any member for services as an officer of the Association.
6. **FISCAL MATTERS.** The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions.
- 6.1 **Depository.** The Association shall maintain its funds in accounts designated from time to time by the Board. The Board shall exercise due care to preserve the principal in such accounts. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

- 6.2 Accounts and Accounting Procedures.** The financial and accounting records of the Association must be kept according to generally accepted accounting principals, and kept for a period of at least seven (7) years. The financial and accounting records must include:
- (A) Accurate, itemized, and detailed records of all receipts and expenditures.
 - (B) A current account and a period statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - (C) All tax returns, financial statements, and financial reports of the Association.
 - (D) Any other records that identify, measure, record or communicate financial information.
- 6.3 Budget.** The Board of Directors shall adopt prior to the end of each fiscal year, a budget of common expenses for the next fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be considered shall be mailed to or served on each Owner not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and show the amounts budgeted by accounts and expense classifications, as well as the actual expenses in the previous fiscal year for the same accounts and expense classifications.
- 6.4 Reserves.** The Board may establish in the annual budget one or more reserve accounts for cash flow shortfalls, capital expenditures, and deferred maintenance. The purpose of reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget. These funds may be transferred between reserve accounts as necessary, upon majority vote of the Board of Directors. Transferred monies shall be returned to the original account as soon as practicable.
- 6.5 Regular Assessments.** Regular assessments based on the adopted budget shall be paid quarterly, in advance, due on the first day of each quarter. Written notice of each installment shall be sent to members at least ten (10) days prior to the due date, but failure to send or receive the notice does not excuse the obligation to pay. In its discretion, the Board may require payment in sem-annual or annual installments instead.
- 6.6 Special Assessments.** Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving the assessment. The notice to owners that a special assessment has been adopted must state the specific purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or credited back to the members' accounts. No special assessment exceeding in the aggregate fifteen percent (15%) of the total annual budget, including reserves, may be levied in any calendar year without the prior

approval of a majority of the voting interests of the Association present, in person or by proxy, at a meeting called for the purpose. The funds collected must be spent for the stated purpose(s). However, upon completion of the stated purpose(s), any excess funds will be considered common surplus.

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

6.8 **Financial Reporting.** The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year, and shall, within ten (10) business days after the report is prepared, provide a copy to each member, or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial report must consist of either:

(A) Financial statements presented in conformity with generally accepted accounting principles; or

(B) A financial report of actual receipts and expenditures, cash basis, which report must show:

(1) The amount of receipts and expenditures by classification; and

(2) The beginning and ending cash balances of the Association.

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

6.10 **Application Of Payments.** All payments on account by an Owner shall be applied first to interest, then to late payment fees, then to attorney's fees and costs, then to other charges, and finally to unpaid regular and special assessments in order they first came due.

6.11 **Fiscal Year.** The fiscal year of the Association begins on the first day of January of each year. The fiscal year may be changed by the Board to accommodate a reasonable business purpose.

7. **RULES AND REGULATIONS; USE RESTRICTIONS.** The Board of Directors may from time to time adopt and amend reasonable rules and regulations (if any) governing the operation, use, maintenance, management and control of the Association Common Areas and the operation of the Association. Copies of such rules and regulations shall be furnished to each Owner. The Board shall have the power to impose fines and suspensions of common area use privileges, as further provided in Section 14.3 of the Declaration (Entitled "Fines"), for violations of the rules and regulations.

8. **AMENDMENT OF BYLAWS.** Except as otherwise provided by law, amendments to these Bylaws shall be proposed and adopted in the following manner.

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

8.2 **Procedure.** If any amendment to these Bylaws is so proposed by the Board or the members, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be reasonably given. The full text of any proposed amendment must be given to the members with notice of the meeting.

8.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the governing documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least a majority of the voting interests of the Association who are present, in person or by proxy, and voting at any annual meeting or a meeting called for that purpose.

8.4 **Effective Date, Recording.** A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted, which certificate shall be signed by the President or Vice President of the Association. The certificate must identify the book and page of the Official Records where the Declaration of Covenants was originally recorded. The amendment shall become effective when the certificate and copy of the amendment are recorded in the Official Records of Collier County, Florida.

9. **MISCELLANEOUS.**

9.1 **Gender, Number.** Whenever a masculine or singular pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, as the context requires.

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

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

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

**PROPOSED CONSOLIDATED, AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
STELLA MARIS**

Whereas, on May 21, 1996, the original Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris was recorded in Official Record Book 2186, at Pages 0360 *et seq.*, of the Official Records of Collier County, Florida (the "Master Declaration");

Whereas, Stella Maris Master Association, Inc. (the "Master Association") is the entity responsible for the enforcement of the restrictions applicable and operation of the property subjected to the Master Declaration pursuant to the Master Declaration;

Whereas, on May 21, 1996, the original Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris Single Family Community was recorded in Official Record Book 2186, at Pages 0414 *et seq.*, of the Official Records of Collier County, Florida (the "Declaration");

Whereas, Stella Maris Homeowners' Association, Inc. (the "Association") is the entity responsible for the operation of the property subjected to the Declaration;

Whereas, the Master Declaration and the Declaration were both declared by the same Declarant;

Whereas, it was the apparent intent of the Declarant that the Master Declaration be restrictive covenants that bound the property subjected to the Declaration together with other properties in close proximity to that property that would be subject to a separate declaration in addition to the Master Declaration;

Whereas, for whatever reason, the Declarant chose not to subject any property to the Master Declaration other than the property that was also subjected to the Declaration together with a small parcel of land between two (2) lots in Stella Maris that is primarily used as a drainage area serving the lots in Stella Maris (i.e. substantially the same land is subject to both of the Declaration and the Master Declaration);

Whereas, the continued existence of separate declarations serving substantially the same property serves no practical purpose;

Whereas, in addition to the property subjected to the Declaration and the Master Declaration, there is a separate parcel approximately ten feet (10') wide that borders each of the lots in Stella Maris which contains a sidewalk and a seawall that services the property subjected to the Declaration and the Master Declaration which is legally described in Exhibit "B" hereto (the "Seawall Property");

Whereas, the Seawall Property was owned by the Declarant, but not previously subject to either the Declaration or the Master Declaration;

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

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Whereas, the Declarant sold the Seawall Property to Stella Maris Seawall, L.L.C. (the "L.L.C.") the members of which are required to be lot owners in Stella Maris pursuant to the L.L.C.'s Operating Agreement;

Whereas, the membership of the Master Association, the Association and the L.L.C. are substantially the same people, all of whom are members of the respective entity by virtue of their ownership of a lot in Stella Maris;

Whereas, the collective membership of the Master Association, the Association and the L.L.C. is desirous of merging all of the entities into one entity that is responsible for the operation of all of the properties and combining the governing documents into one comprehensive set of documents;

Whereas, simultaneously with the approval of this consolidated Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris, the membership of each entity described above approved a merger of the three (3) entities and agreed to subject the Seawall property to the Declaration;

Now Therefore, the Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris and the Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris Single Family Community are hereby consolidated, amended and restated in their entirety, as follows:

1. **SUBMISSION STATEMENT.** This Amended and Restated Declaration of Covenants, Conditions and Restrictions is made by Stella Maris Master Homeowners' Association, Inc. (f/k/a Stella Maris Master Association, Inc.), a Florida corporation not for profit. The real property subject to this Declaration is legally described as:

All of Stella Maris, according to the Plat thereof recorded in Plat Book 26, Pages 26 and 27, of the Public Records of Collier County, Florida, less and except Lot 72 (The legal description of the such property is shown on Exhibit "A" to the original Declarations, as amended, which Exhibits are hereby incorporated by reference);

together with the Seawall Property which is being subjected to this Declaration which is legally described in Exhibit "B" hereto (hereinafter referred to as the "Property" or the "Neighborhood." Attached as Exhibit "C" to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris is a joinder and consent given by Stella Maris Seawall, L.L.C., a Florida limited liability company, which is the owner of the Seawall Property.

The covenants and restrictions contained in this Declaration run with the land and are binding upon, and inure to the benefit of, all present and future Owners of Lots. The acquisition of any ownership interest in the real property, or the lease, occupancy, or use of any portion of a Lot or Living Unit, constitutes an acceptance and ratification by the Owner of all provisions of this Declaration, as it may be amended from time to time, and an agreement to bound by its terms.

2. **DEFINITIONS.** Certain words and phrases, as used in this Declaration and its recorded exhibits, are intended to have the meanings stated in this Section, unless the context clearly requires another interpretation.

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

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2.1 "**Association**" means Stella Maris Master Homeowners' Association, Inc., a Florida corporation not for profit.

2.2 "**Board**" means the Board of Directors of the Association.

2.3 "**Common Areas**" means any and all parts of the Property that are dedicated to or owned by the Association or any other property that is dedicated, conveyed, leased or licenced to the Association, and which is intended to be devoted to the common use and enjoyment of the Members. Common Areas include, but are not limited to the Water Management Systems and the Seawall Property.

2.4 "**Declaration**" or "**Declaration of Covenants**" means this Declaration of Covenants, Conditions, Restrictions and Easements of Stella Maris, as amended from time to time.

2.5 "**Development Plan**" means the Planned Unit Development Ordinance for Stella Maris, approved by Collier County, Florida, for the development of Stella Maris, as amended or implemented from time to time by such plats as may be approved and filed of record.

2.6 "**District**" means the Port of the Islands Community Development District, its successors and assigns which is established pursuant to Chapter 190, Florida Statutes, as a uniform development district that imposes taxes and/or assessments on the Property and throughout the Port of the Islands community through a special taxing district. (These taxes and assessments pay the construction, operation and/or maintenance costs of facilities owned and operated by the District, and are set annually by the District's governing Board. These taxes and assessments are in addition to the County and all other taxes and assessments provided by law.)

2.7 "**Family**" or "**Single Family**" shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

2.8 "**Governing Documents**" means the Declaration of Covenants, Articles of Incorporation and Bylaws, all as amended from time to time. If there is an irreconcilable conflict between provisions in any two or more of these documents, the first document to appear in the foregoing list shall prevail over all others.

2.9 "**Guest**" is a person who is physically present in a Living Unit on a temporary basis at the invitation of the Owner, or tenant, or other legally permitted occupant, without paying anything of value for the privilege.

2.10 "**Lease**" means the grant by an Owner to another person of a right to use the Owner's Living Unit as a temporary residence for valuable consideration.

2.11 "**Living Unit**" or "**Residence**" means any or all of the residential structures constructed on the Lots, each intended for use and occupancy as a residence for a single family.

2.12 "**Majority Vote**" Or "**Majority Vote Of Members**" means, unless otherwise stated, 50% plus one of the votes cast in person, by proxy, or by mail.

2.13 "**Lot**" means any one or more of the platted parcels of land into which the Neighborhood is subdivided, upon each of which a Residence appears. "Lot" is to be interpreted as though followed immediately by the words "and the Living Unit constructed thereon," unless the context clearly requires a different interpretation.

2.14 "**Occupy**" when used in connection with a Living Unit, means the act of residing in the unit on two (2) or more consecutive nights. An "**Occupant**" is one who occupies a unit. "**Occupy**" means the act of being an occupant.

2.15 "**Owner**" or "**Member**" means a record Owner of legal title to a Lot.

2.16 "**Primary Occupant**" means one natural person approved for occupancy of a Living Unit, when record legal title to the Living Unit is held in the name of more than two persons, or in trust, or by a partnership or corporation or other entity which is not a natural person, as provided in Section 13.1 below.

2.17 "**Property**" "**Properties**" or "**Neighborhood**" means all the real property which is subject to this Declaration, including Common Areas and Lots.

2.18 "**Rules and Regulations**" means the administrative rules and regulations governing the use of the Common Areas and procedures for administering the Association, as adopted or amended by resolution of the Board of Directors.

2.19 "**Service Charge**" means a charge levied against one or more Lots for any service, material or combination thereof which may be provided by the Association for the benefit of the Lot Owners, such as contracting for repairs, services or materials. Amounts paid or debt incurred by the Association on behalf of the Lot Owners accepting or receiving the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots or Living Units so benefitted. The Owner(s) are deemed to have agreed to pay the charge by subscribing, requesting, or accepting the benefits of materials or service.

2.20 "**Voting Interests**" refers to the arrangement for voting by the members established in the Articles of Incorporation and the Bylaws by which the Owner of each Lot has one (1) indivisible vote, which may be cast as provided in the Bylaws when a vote of the members on Association matters is required or permitted. There are fifty (50) Lots, therefore there are fifty (50) voting interests.

2.21 "**Water Management System**" means constructed surface and/or underground systems and facilities for the drainage and/or storage of surface water throughout the Property.

3. **APPURTENANCES; GENERAL PROPERTY RIGHTS; DURATION OF COVENANTS.**

3.1 **Appurtenances To The Lots.** The Owner of each Lot has certain rights and obligations that are appurtenant to the Lot, and cannot be changed or taken away from the Owner of the Lot without his consent and that of any person holding a lien on the Lot, including without limitation the following:

- (A) Membership in Stella Maris Master Homeowners' Association, Inc. and the right to cast one (1) indivisible vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.
- (B) The exclusive right to use the Lot, subject to the restrictions imposed herein.
- (C) The non-exclusive right to use the Common Areas for the purposes for which they are intended and reasonably suited, subject to the rules of the Association, and to all restrictions and limitations imposed in the Governing Documents, as amended from time to time.
- (D) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the Owner's proportional share of liability for the assessments for common expenses levied by the Association. The ownership of an undivided share of the assets and common surplus does not entitle any Owner to a distribution.
- (E) The appurtenances to a Lot automatically pass with the title to the Lot, whether separately described or not, and cannot be separated from the title to the Lot, or assigned, pledged or transferred, except with legal title to the Lot.
- (F) Other appurtenances expressly created in the Governing Documents, as may be amended from time to time.
- (G) Other appurtenances expressly created in the POI Declaration, as may be amended from time to time.
- (H) Other appurtenances expressly created in the ordinance creating the District, as may be amended from time to time.

3.2 **Use And Enjoyment Of Lots And Common Areas.** An Owner is entitled to exclusive use and possession of his Lot and Living Unit subject to the Governing Documents. He is entitled to non-exclusive use of the Common Areas for their intended purposes, but no use of any Lot or Common Area may unreasonably interfere with the property rights of other Owners or residents. The Owners rights under this Section are subject to:

- (A) The right and duty of the Association to levy assessments for common expenses against the Lots for the upkeep, maintenance, repair or betterment of the Common Areas and improvements thereon, and for the costs of operating the Association.

- (B) The right of the Association, by resolution of the Board of Directors, to dedicate or transfer or grant easements on, over, under, across or through any part of the Common Areas to any public agency, authority, or utility, for such purposes, and subject to such conditions, as may be determined by the Board. No such easement or the permitted uses of the easement shall materially interfere with the rights of the Owners to use the Common Areas.
- (C) The right of the Association to grant the right to Owners use of portions of the seawall for the purpose of maintaining a boat dock and/or boat slip over the waters adjacent to the seawall as set forth in Section 11.2 below.
- (D) Reasonable rules and regulations promulgated by the Association.

3.3 Partition, Separation Of Interests. There shall be no judicial partition of the Common Areas, except as expressly provided elsewhere herein, nor shall any Owner or any other person acquiring any interest in the Association, or any part thereof, seek judicial partition thereof. Nothing herein is intended to prevent judicial partition of any Lot and Living Unit owned in contingency. The ownership of a Lot, and ownership of the Living Unit constructed thereon, may not, however, be separated or separately conveyed, nor may any person who is not an Owner of at least one Lot and Living Unit hold membership in the Association.

3.4 Duration of Covenants. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association and by any Owner, their respective legal representatives, heirs, successors and assigns in perpetuity.

4. EASEMENTS. Each of the following easements and easement rights is a covenant running with the land, and notwithstanding any other provision of this Declaration, may not be revoked and shall survive the exclusion of any land from the Association. Any lien encumbering these easements is automatically subordinate to the rights of the Lot Owners with respect to such easements. Each Lot is subject to an easement in favor of all other parts of the Association for the location of utilities, for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Association. The parts of the Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the Owners, and each Owner has a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and rules of the Association.

4.1 Easements to Use. All Owners shall have a non-exclusive easement to use and enjoy the Common Areas, subject to the terms of the Governing Documents, including parking and traffic regulations adopted by the Association, payment of use or access fees or other charges reasonably imposed by the Association and subject to any restrictions or limitations contained in any instrument conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to the Governing Documents. An Owner who leases his or her Parcel shall be deemed to have delegated all such rights to the lessee of the Parcel. All Common Areas shall be maintained by the Association in such manner that its use and enjoyment as open space will not be diminished or destroyed. No Common Areas shall be developed except for use by Owners as open space.

4.2 Utility And Other Easements. The Association has the power, without the joinder of any Owner, to grant, modify or move easements such as water, sewer, electric, gas, cable television, waste pickup and hauling, and/or other utility, service or access easements, and to relocate any existing easements in any portion of the Association, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Association. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company service provider, or governmental agency to which any such utility-related equipment or installations are to be so transferred.

4.3 Ingress and Egress. A non-exclusive easement exists in favor of each Owner and occupant, and their respective guests, tenants, contractors, licensees and invitees for pedestrian traffic over, through, and across the sidewalks, streets, paths, walks, and other portions of the Common Areas intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across any parts of the Common Areas that are or may be paved or intended for such purposes, to provide ingress from and egress to the public ways.

4.4 Drainage. A perpetual, non-exclusive easement exists in favor of the Association and its employees, agents, contractors or other designees for the use of drainage areas established throughout Stella Maris, and an easement for ingress, egress, and access to enter any portion of Stella Maris in order to construct, maintain or repair, as necessary, any drainage areas and improvements thereon specifically including, without limitation, access over and across portions of the Common Areas by utility companies. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

4.5 Easement for Encroachment and Overhang. There shall be a reciprocal appurtenant easement for encroachment and overhang between adjacent Lots. Such easement shall be for roof overhangs, and other improvements which were unintentionally placed or have settled or shifted. The easement shall be for a distance of not more than five (5) feet, as measured from any point on the common boundary between the adjacent Lots, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment of anything other than an overhang exist if such encroachment occurred due to willful conduct on the part of an Owner.

4.6 Additional Easements. The Board of Directors shall have the right to execute, without further authorization, such grants of easement or other instruments as may from time to time be desirable for the development of the Property.

5. **ASSOCIATION: PURPOSES; POWERS.** The administration and management of the Stella Maris Master Homeowners' Association, Inc., a Florida corporation not for profit, shall perform its functions pursuant to the following:

5.1 **Powers And Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 617 and 720, Florida Statutes, particularly Sections 720.301 through 720.312, Florida Statutes, as they may be amended from time to time. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Association. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual Owner or class of Owners to bring any action which may otherwise be available.

5.2 **Board of Directors.** Except as otherwise expressly provided by law or by the Governing Documents the Association acts through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

5.3 **Articles Of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "D".

5.4 **Bylaws.** The Bylaws of the Association are attached as Exhibit "E" to this Declaration, and may be amended from time to time.

5.5 **Determination Of Management.** The Association may contract with a manager or management agent to assist the Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, keeping of records, and enforcement of covenants and rules, with funds made available by the Association for such purposes. The Association and its officers however, retain at all times the powers, duties, and non-delegable responsibilities imposed by Sections 720.301-720.312, Florida Statutes, as amended from time to time, and by the Governing Documents.

5.6 **Members.** Every person or entity who is a record Owner of a fee simple interest in any Lot shall be a member of the Association, as further provided in the Bylaws. Membership is appurtenant to, runs with, and cannot be separated from, the real property ownership interest upon which it is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

5.7 **Termination Of Membership.** Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

5.8 Association As Owner of Lots. The Association has the power to purchase Lots and to acquire and hold, lease, mortgage and convey them. The Association has the right to purchase a Lot at a foreclosure sale resulting from the Association's foreclosure of its lien for unpaid assessments or charges (including fines), or to take title by deed in lieu of foreclosure. However, the acquisition of any Lots not resulting from the Association's foreclosure action, must have the prior approval of a majority of the voting interests of the Association present in person, by the procedures in Section 3.11 of the Bylaws or voting at a special meeting called for the purpose.

5.9 POI Association. Each Owner is also a member of The Association for Port of the Islands, Inc., a Florida not-for-profit corporation, its successors and assigns (the "POI Association") so long as such corporation exists. The POI Association is charged with the responsibility of enforcing the Declaration of General Protective Covenants and Restrictions recorded in O.R. Book 1144 at Page 1164 *et seq.* of the Public Records of Collier County, Florida, as amended from time to time. Membership in The Association of Port of the Islands, Inc. and the right to vote in Association affairs as set forth in the POI Association's Articles of Incorporation and Bylaws, which rights shall be acquired and exercised as provided therein. The Association shall collect assessments and other monies owed to the POI Association by Owners, if any. In the event any amount owed the POI Association is not timely paid, the Association shall have the right to enforce its rights against the Owner(s) whose payment is not received.

6. ASSESSMENT FOR COMMON EXPENSES. The Association has authority to levy assessments against the Lots to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Common Areas and all improvements thereon, the costs of providing insurance for the benefit of the Association, its Directors and officers, and its members; the expenses of carrying out the powers and duties of the Association, and any other expense, whether included in the foregoing or not, that is expressly designated as a common expense in this Declaration or in the Bylaws.

6.1 Covenants. Each Owner of a Lot, and each subsequent Owner of any Lot (including a purchaser at a judicial sale), by acceptance of a deed or other instrument of conveyance, whether it is so expressed in the deed or instrument of conveyance or not, is deemed to covenant and agree to pay to the Association:

- (A) The Lot's pro rata share of quarterly assessments based on an annual budget of common expenses adopted by the Board of Directors;
- (B) The Lot's pro rata share of special assessments levied for capital improvements or other expenses that cannot be paid from the regular assessments;
- (C) Service charges and other fees (including fines) imposed against, or payable by, less than all of the Lots, as authorized elsewhere in this Declaration, in the Bylaws of the Association, or the Rules and Regulations of the Association.

Assessments are established and collected as provided herein and in the Bylaws, and are due and payable the first day of each calendar quarter. The obligation to pay the assessments and other charges described above, together with late payment fees, interest, costs, and reasonable attorney's fees incurred in the collection process, shall bind each Lot in the hands of its Owner, and his heirs, devisees, personal representatives, successors and assigns. Except as otherwise

provided, whether title to a Lot or Living Unit is transferred for any reason, the new Owner is jointly and severally liable with the previous Owner for all assessments and other charges that are unpaid at the time of the transfer, regardless of when the obligation was incurred, without prejudice to any right the new Owner may have to recover from the previous Owner any such amounts the new Owner is required to make. No Owner may avoid personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by waiving use rights, or by abandoning the Lot.

6.2 Shares Of Assessments. Each Lot and the Owner thereof shall be liable for an equal share of annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots included within the Neighborhood. There are fifty (50) Lots, therefore each Lot and the Owner thereof is liable for one-fiftieth (1/50) of the annual and special assessments. Except by operation of law, no Owner may be excused from the payment of assessments unless all Owners are similarly excused.

6.3 Establishment Of Liens To Secure Payment. All assessments, charges and other sums due the Association in accordance with the foregoing, together with any late payment fees, interest at the highest rate allowed by law, and costs of collection (including, but not limited to costs and reasonable attorney's fees) create a continuing lien upon the Lot and Living Unit against which each such assessment or charge is made, and they are also the personal obligation of the Owner of each Lot and Living Unit at the time they came due. This lien relates back to the date this Declaration was originally recorded, and is superior to any Homestead rights the Owner may have. The lien is activated by recording a Claim of Lien in the public records of the County, setting forth the amounts then past due and the due dates, as of the date the Claim of Lien was recorded. The recorded Claim of Lien secures payment of all unpaid assessments and charges due at the time of recording (including late payment fees, interest, costs and attorney's fees as provided above), as well as all assessments and charges that subsequently come due, until the lien is satisfied or a final judgment of foreclosure is obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

6.4 Priority Of Liens. Except as otherwise provided by law, the Association's lien for unpaid assessments and other charges is subordinate and inferior to that of any recorded First Mortgage (which means any recorded mortgage with first priority over other mortgages), unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and take priority over, any other mortgage regardless of when recorded, as well as all other recorded liens except federal tax liens and liens for unpaid property taxes. A lease of a Living Unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or other charge coming due after taking title. Any unpaid assessment or other charge which cannot be collected by reason of this Section shall be treated as a common expense, collectable from all Lots, including the Lot as to which the foreclosure (or deed in lieu of foreclosure) occurred.

6.5 Collection Of Assessments. If any Owner fails to pay any assessments, other charge, or installment thereof, within fifteen (15) days after the due date, the Association shall have any or all of the following remedies, to the fullest extent permitted by law, which remedies are cumulative, so they are not in lieu of, but are in addition to, all other remedies available.

- (A) To charge interest at the highest rate allowed by law on the amount of the assessment or other charge, from the due date until paid.
- (B) To impose a late payment fee in an amount set by the Board which shall not exceed the amount allowed by law.
- (C) To file an action in equity to foreclose the lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association in the same manner as provided in Section 718.116, Florida Statutes, as amended from time to time, for the foreclosure of liens upon condominium units for unpaid assessments.
- (D) To bring an action at law for a money judgment against the Owner without waiving any foreclosure rights of the Association.
- (E) To the extent lawful, to suspend the voting rights of the Owner in Association matters until the Owner's account is current.
- (F) To deny Association approval of any proposed lease of the Owner's Living Unit.
- (G) To accelerate the due date for the entire remaining unpaid amount of the annual assessment against the Owner's Lot for the remainder of the fiscal year, notwithstanding any provision of the Governing Documents calling for installment payments of annual assessments.

6.6 Estoppel Certificate. The Association shall, within fifteen (15) days after receiving a written request for same, furnish to any Owner, purchaser or mortgage lender a certificate in writing signed by an agent or officer of the Association, setting forth whether all assessments and charges against the Owner's Lot have been paid, and itemizing any that have not been paid. Any person, except the Owner, who relies on the certificate shall be protected thereby.

7. ARCHITECTURAL AND AESTHETIC CONTROL No building, structure, pool or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, change of exterior color or other work which in any way materially alters the exterior appearance of any structure, Lot or Common Area be performed without the prior written approval of the Board of Directors of the Association. With respect to landscaping, the planting of bushes or plants that are commonly accepted within the neighborhood is not a "material" alteration that requires Board approval. (For example, planting flowers in an existing bed does not require approval, however planting bushes to create a barrier hedge does require approval.) In obtaining said written approval, Owner, or any other person applying, shall comply with all applicable requirements and procedures of the governing Documents. Refusal of approval for plans and specifications may be based on any reason including purely aesthetic reasons.

7.1 Powers and Duties. The architectural and aesthetic review and control functions of the Association shall be administered and performed by the Board of Directors. The Board shall have the power and duty to:

- (A) Propose the adoption, modification or amendment of written Architectural/Aesthetic Criteria, which shall set forth such things as landscape material, colors and materials which the Board finds acceptable. Notice of any adoption, modification or amendment to the Architectural/Aesthetic Criteria, including a verbatim copy of such adoption modification or amendment, shall be mailed to each member of the Association at least fourteen (14) days prior to the meeting at which such adoption, modification or amendment is acted upon;
- (B) Approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading, excavation, alters the exterior appearance of any structure, Lot or Common Area, except that the Board shall only have authority to approve or disapprove the location and dimensions parallel to the seawall of a boat dock installation or alteration;
- (C) Adopt a procedure for inspecting approved changes during and after construction to insure conformity with approved plans.
- (D) Set a time limit during which the approved changes must be completed.
- (E) Enact regulations regarding the appearance of Lots and adjacent common areas during the construction or renovation period, which regulations may include but are not limited to the placement of dumpsters and building materials.
- (F) Appoint an Architectural Control Committee to make recommendations to the Board regarding architectural decisions, however, the Board's decision on the matter shall be final.

8. MAINTENANCE; IMPROVEMENTS

8.1 Maintenance Of Common Areas. The Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements constructed on the Common Areas, including, but not limited to all landscaping, sprinkler pipes and systems, paving drainage structures, walkways, seawalls, retaining walls, recreation facilities, private streets, common area lighting fixtures and appurtenances, entrance features and other structures, except public utilities, all such work to be done as ordered by the Board of Directors or its designee. Maintenance of lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. The Association, its successors and assigns, shall have a perpetual, non-exclusive easement for ingress and egress over, upon and across all portions of the Properties and to excavate thereon in connection with the maintenance of sprinkler pipes and systems to the extent necessary for the performance of the work to be performed pursuant to this Section; provided, however, that the party causing any such excavations restores disturbed areas as nearly as practicable to the condition thereof immediately prior to such excavations.

8.2 Maintenance Of Residences, Lots and Boat Docks.

(A) **By the Association.** The Association shall maintain, repair and replace the roofs of the Residences, keeping the same in a condition comparable to the condition of such improvements at the time of their initial construction except for normal wear. For the purposes of this Section the "roof" shall mean the sheeting up to the tile (i.e. all materials under the sheeting, including the trusses, are not required to be maintained, repaired or replaced by the Association). Additionally, the Association shall be responsible for the painting of the exterior surfaces of the Residences. If in the course of executing its duties pursuant to this Section, the Association deems it necessary to make repairs to portions of the Residence required to be maintained, repaired or replaced by the Residence owner, then the Association may make the repairs. (For example, this may include stucco repairs or removal and replacement of hurricane shutters is required at the time the Residence exterior is painted.) Any expenses so incurred by the Association shall be assessed as a special charge against the Owner, together with reasonable attorney's fees and other expenses of enforcement. Such assessments shall become a lien on the Lot or Living Unit which may be foreclosed or otherwise collected pursuant to this Declaration, the Association Bylaws and Florida Law.

(B) **By the Residence Owner.** The owner of each Residence shall maintain, repair and replace, at his own expense, all portions of his Residence except those portions specifically required to be maintained, repaired and replaced by the Association. By way of illustration, and not limitation, the owner's responsibility includes stucco, doors, windows, glass and screens, door and window hardware, air conditioning compressors, pool and related equipment (if any), and any landscaping within an enclosure attached to the Residence. Painting of doors and walls, however, is an Association responsibility. Any owner who has installed a boat dock and/or boat lift attached or adjacent to the seawall shall be responsible for the maintenance, repair and replacement of the boat dock and/or boat lift. Nothing in this Section shall be construed to obligate an owner to replace their boat dock and/or boat lift in the event it is removed. However, in no event may an owner be allowed to keep a boat dock and/or boat lift adjacent to the seawall that is in disrepair. The determination as to whether a boat dock and/or boat lift is in disrepair shall be made by the Board taking into consideration whether the boat dock and/or boat lift constitutes a hazard to other property or residents or has a materially adverse affect on the appearance of the neighborhood.

8.3 Lawns and Landscaping. Lawns and Common Areas shall be maintained by the Association. All landscaping within any enclosure attached to the Residence on Lots shall be maintained by the Owner thereof and shall be kept in a neat and orderly fashion. Stone, gravel, or paving may not be used as a substitute for grass in a lawn.

8.4 Alteration of Lots or Residences by Unit Owners. No owner shall make or permit the making of any material alterations or substantial additions to his Lot or Residence, or in any manner materially change the exterior appearance of any portion of the Neighborhood, without first obtaining the written approval of the Board of Directors as set forth in Section 7 above. The Board of Directors may revoke or rescind the approval of an alteration or modification previously given, if it appears that the installation has had unanticipated material adverse effects on the Neighborhood or other Residences. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner, and his successors in title, shall be financially responsible for:

- (A) Insurance, maintenance, repair and replacement of the modifications, installations or additions;
- (B) The costs of repairing any damage to the common areas or other Residences resulting from the existence of such modifications, installations or additions; and
- (C) The costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the Residence for which the Association is responsible.

Expenses incurred by the Association for such items, if any, shall be assessed against the respective Lot as a special charge applicable to that Lot.

8.5 Party Walls. The Residence's Owners shall be responsible for the maintenance repair and replacement of party walls as set forth below.

- (A) **Definition.** Each wall which is built as part of the original construction of the Residence within the Neighborhood and placed on the dividing line between the Residence Sites for the use of more than one residence shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Section 8.5, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (B) **Cost of Repairs.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- (C) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner(s) thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. This paragraph shall be deemed to be in addition to, and not in lieu of or to the exclusion of, the rights of the Association under Section 9 below.
- (D) **Weatherproofing.** Notwithstanding any other provision of this Section 8, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

- (E) **Contribution.** The right of any Owner to contribution from any other Owner(s) under this Section 8.5 shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (F) **Binding Arbitration.** In the event of any dispute arising concerning a party wall, such dispute shall be submitted to arbitration. Each Party shall choose one arbitrator, and the arbitrators shall choose one additional arbitrator. The decisions of a majority of the arbitrators shall bind the parties.

8.6 Enforcement Of Maintenance. If the Owner of a Living Unit or Lot fails to maintain it as required herein or the Living Unit or Lot is not cared for and/or maintained in a manner acceptable to the Board of Directors and in general conformity with the standards of the community, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, or which has a materially adverse affect on the appearance of the neighborhood. Such action shall not be taken without advance written notice to the Owner. Any expenses so incurred by the Association shall be assessed as a special charge against the Owner, together with reasonable attorney's fees and other expenses of enforcement. Such assessments shall become a lien on the Lot or Living Unit which may be foreclosed or otherwise collected pursuant to this Declaration, the Association Bylaws and Florida Law. Notwithstanding the foregoing, the Association shall not have the right to enter the interior of the Living Unit except in the case of an emergency as necessary to prevent damage to another Living Unit or common areas.

8.7 Negligence; Damage Caused By Condition In Living Unit Or Lot. The Owner of each Living Unit or Lot shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents or lessees; but, unless the negligence is of such character as to evidence gross recklessness or willful or wanton disregard for life or property, the Owner shall be liable only to the extent that such expense is not met by the proceeds of insurance. If any condition, defect or malfunction existing within a Living Unit, whether caused by the Owner's negligence or otherwise, shall cause damage to the Common Areas or to other Living Units, the Owner of the offending Living Unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not met by insurance. If one or more of the damaged Living Units is not occupied at the time the damage is discovered, the Association may enter without prior notice to the Owner and take reasonable actions to prevent the spread of damage. Any expenses so incurred by the Association shall be assessed against the Owner, together with reasonable attorney's fees and other expenses of enforcement.

8.8 Alterations and Additions to Common Areas and Association Property. The protection, maintenance, repair, insurance and replacement of the common areas and association property is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association or any owner shall make no material alteration of, nor substantial additions to, the common areas or the real property owned by the Association costing more than twenty percent (20%) of the Association's annual budget in the aggregate in any calendar year without prior approval of at least a majority of the voting interests present and voting, in person or by proxy, at a meeting called for the purpose. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common areas or association property also constitutes a material alteration or substantial addition to the common areas, no prior unit owner approval is required.

8.9 Capital Improvements. Funds necessary for substantial capital improvements to the Common Areas in excess of fifteen percent (15%) of the total annual budget (including reserves) may be levied as special assessments by the Association only upon approval by a majority of the Board of Directors and approval by a majority of the voting interests present, in person or by proxy, and voting at a meeting or by ballot as provided in Section 3.11 of the Bylaws. Special assessments less than that amount may be levied by a majority of the Board alone, so long as the aggregate of the special assessments approved by the Board in each fiscal year do not exceed that amount.

8.10 Right of Entry and Limitation of Association's Liability. The Association shall have the right, but not the obligation, for itself and its designee, or any agent or employee to enter upon any Lot to carry out the provisions of this Declaration and same shall not constitute trespass. The Association shall not enter into the Living Unit on a Lot with out the prior consent of the Owner, except in the case of an emergency. Notwithstanding its duty to maintain and repair portions of Residences and common areas, the Association shall not be liable to individual owners for personal injury or property damage caused by any condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons. The Association shall not be liable to any owner for repairing or replacing decorative surfaces, personal property or fixtures within the Residence, including but not limited to wallpaper, floor coverings furniture and artwork.

9. INSURANCE OF LIVING UNITS; RECONSTRUCTION AFTER CASUALTY. In order to protect values and maintain the Neighborhood's appearance by minimizing the existence of partially or completely demolished residences for unreasonably long periods of time, and in order to protect all other Owners from the adverse effects of the negligence or imprudence of a few, the following provisions shall apply:

9.1 Duty To Insure And To Reconstruct. Each Owner shall at all times maintain property insurance on his Living Unit and all other insurable improvements on his Lot in an amount equal to the replacement cost thereof taking into account local construction costs and property values as they may from time to time exist. If the Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner shall cause the removal of all debris within sixty (60) days and shall complete the repair or replacement of the damaged structure within one (1) year after the date that such damage or destruction occurred. All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements.

9.2 Failure To Insure. The Association has the right to require each Owner to produce proof of insurance. If an Owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the Owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become a special charge against the Lot and are due and payable by the Owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the Owner, in writing, that it has procured such insurance, and the costs thereof. Should the owner fail to carry the required insurance, the owner shall be liable for all damages that would have been covered by the policy had it been in place at the time of a loss, including any item for which the Association has maintenance responsibilities as provided in this Declaration.

9.3 Failure To Reconstruct. If the Owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.1 above, the Association shall give written notice to the Owner of his default. If the Owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the Association mailed such notice, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to remove all debris and damaged improvements, or to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section, which shall be at the sole discretion of the Board of Directors, the Owner of the Lot shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the Owner any costs not paid by insurance, and shall have a lien on the Lot and Living Unit to secure payment.

9.4 Association's Right Of Entry. For the purpose of performing the duties imposed by this Section 9, the Association, through its duly authorized agents and employees, has the right, after written notice to the Owner, to enter upon the Lot at reasonable hours and perform such duties.

9.5 Deductible. The party responsible for procuring insurance on an item must pay the deductible in the event of a loss involving that item, regardless of who may be responsible to maintain, repair or replace that item as provided in this Declaration.

10. ASSOCIATION INSURANCE.

10.1 Duty And Authority To Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage which it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums shall be a common expense. The name of the insured shall be the Association as agent for the Owners without naming them, and their mortgagees.

10.2 Required Coverage. The Association shall maintain adequate liability insurance and casualty insurance covering buildings and other insurable improvements (if any) within the Common Areas, with coverage in amounts as determined annually by the Board of Directors; such insurance to afford the following protection:

- (A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism, and malicious mischief, and other hazards covered by what is commonly referred to as an "all risk" property contract.
- (B) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross liability endorsement to cover liabilities of the Owners as a group to any single Owner.
- (C) **Fidelity Bonding.** Adequate fidelity bond coverage for all individuals having control of or access to Association funds.
- (D) **Directors and Officers Liability.**

10.3 Optional Coverage. The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and Owners. Some common examples are Flood Insurance; Broad Form Comprehensive General Liability Endorsement; and Medical Payments.

10.4 Descriptions Of Coverage. All Association insurance policies shall be available for inspection by Owners upon request.

10.5 Waiver Of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogate as to any claim against Owners, the Association, or their respective servants, agents or guests, except for any claim based primarily upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

10.6 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

10.7 Distribution Of Proceeds. Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

10.8 Association As Agent. The Association is hereby irrevocably appointed as the agent for each Owner, to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

11. GENERAL COVENANTS AND USE RESTRICTIONS.

11.1 Use Restrictions. The Lots in the Association shall be used for single family residences and for no other purposes. This Section is intended to prohibit commercial or business activity by an Owner or occupant of a Living Unit which would noticeably change the residential ambiance of the neighborhood, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the neighborhood by persons making deliveries, pick-ups, employees or other business associates, or customers and clients. No Lot or portion thereof shall be conveyed or used as a Time-Share Property or as part of a Time-Share Plan as those terms are defined under Chapter 721, Florida Statutes.

11.2 Boat Docks and Boat Lifts. At the time that the Seawall Property is subjected to this Declaration, it has attached to it and adjacent to it boat docks and/or boat lifts, that have been constructed and installed by the Owners of Lots, at their sole expense and for their sole use. Those boat docks and/or boat lifts were installed in areas leased by the Lot Owners from the L.L.C. Any Owner who has constructed and installed a boat dock and/or boat lift, and their successors in interest, shall have the right to keep the dock and/or lift in its current location with its current dimensions (i.e. in the previously leased areas). Additionally, the owner shall have the right to maintain, repair and replace the dock and/or lift in its current location and dimensions. However, if an Owner chooses to remove the boat dock and/or boat lift and abandons the previously leased area, the Association may limit reconstruction of that boat dock and/or boat lift to within the location that lies within an extension of the rear lot lines for that Owner's Lot. [For the purpose of this Section an owner has abandoned their previously leased area if the area is not utilized by the Owner for a period of more than three (3) months or the Owner has indicated in writing the intention to abandon the area. Except that the area previously leased by the Owner of Lot 69 may only be

abandoned with the written consent of the Owner of Lot 69.] The following restrictions shall also apply to the boat docks and/or boat lifts connected to or adjacent to the Seawall Property.

- (A) **Unit Owner Responsibilities.** Each Owner who has a boat dock and/or boat lift shall be responsible to maintain the boat dock and/or boat lift and his boat in a clean and safe condition. It shall be the Owner's responsibility to maintain repair and replace their boat dock and/or boat lift as set forth in Section 8.2 (B) above.
- (B) **Dock Alterations.** Owners shall make no changes to the location of pilings, lifts or docks without the written consent of the Board of Directors, except for installation of bits, cleats, rings and dockline, which the owners may install at their own expense. No Owner may install or alter a boat dock, boat lift or piling in such a manner that will unreasonably restrict the docking, mooring, access, or navigation of another owner's boat to or from an existing boat dock and/or boat lift. Notice of any Board Meeting at which the Board will consider consenting to an Owner's request to change to the location of pilings, lifts or docks, must be given to the Owners of any adjacent Lot not less than ten (10) days prior to the meeting. The adjacent Owners shall have the right to comment on the requested change.
- (C) **Restrictions.** Only Owners, tenants, and members of the family who normally reside in the Living Unit may keep a boat at the Property. All walkways and dock areas shall be kept clear except when loading, unloading and working on the boat. Water hoses and boat lines shall be neatly placed and coiled when not in use. Rubbish, bottles, cans and other debris shall not be thrown overboard in the dock area. No one may sleep overnight or live aboard any boat, or cook with an open flame while it is docked at the Seawall Property. Engines and motors shall not be run unnecessarily while at the dock. Boats shall be properly secured to pilings, cleats and rings by their lines. No boat dock and/or boat lift shall be used for any commercial purpose. Each owner and tenant shall be responsible for securing the boats and other personal items kept in their boat dock and/or boat lift in the event of inclement weather.
- (D) **Common Area Docking.** There are areas along the seawall that were not leased or otherwise utilized by Owners for docking boats (i.e. more particularly portions of the Seawall Property abutting the side yards of Lots 41 and 49, except that area previously leased by the Owner of Lot 49, unless or until that area is abandoned as defined above). These areas may be used by Owners and their house guests for the temporary or transient docking of boats. No boat may be docked in these areas for any period of time exceeding one (1) week without the prior written permission of the Board. The Board may in its discretion further regulate the docking of boats in these common areas, so long as such regulations do not conflict with the governing documents.

11.3 **Parking and Storage of Motor Vehicles.**

- (A) No commercial vehicle of any kind may be parked in the Neighborhood unless kept fully enclosed inside a structure, except for service vehicles temporarily present to provide services to the Living Units, Lots or Common Areas.

- (B) No boat, trailer of any kind, semitrailer, house trailer, camper, mobile home, motor home, bus, truck, abandoned or inoperative, or unlicensed vehicle shall be permitted to be parked, kept or stored on the Properties unless kept fully enclosed inside a structure, except same may be temporarily parked on private driveway for short periods, but in no event more than seventy-two (72) hours.
- (C) No motor vehicle shall be parked anywhere other than on paved areas designated for that purpose, or in garages. Parking on lawns, across walkways, Common Areas or landscaped areas is prohibited. Motor vehicles may not be parked overnight on the roads in the Neighborhood.
- (D) No motor vehicle shall be used as a domicile or residence, either permanent or temporary while in the Neighborhood.
- (E) The following definitions shall apply for purposes of this Section:
- (i) "Abandoned or inoperable" means any vehicle that has not been driven under its own propulsion for a period of three (3) weeks or longer, provided however, this shall not include vehicles parked in an enclosed garage or operable vehicles left on the lot while on vacation.
 - (ii) "Boat" means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons, or personal property.
 - (iii) "Bus" means all vehicles of any kind whatsoever, manufactured, designed, marketed or used as a bus, for transport of greater number of passengers or goods than automobiles are customarily manufactured, designed, marketed or used to carry, but excluding vehicles manufactured, designed or marketed as full-size passenger vans or "minivans."
 - (iv) "Camper" means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property, including conversion vans in excess of twenty feet (20') in length.
 - (v) "Commercial Vehicle" means all vehicles of every kind whatsoever, which from viewing the exterior of the vehicles or any portion thereof, shows or tends to show any tool boxes, commercial markings, signs, displays, or otherwise indicates a commercial use and specifically includes, but is not limited to makers such as taxi cabs, or advertising for any business, retail operation, food service establishment, trade or profession, or its exterior shows signs of use in commercial applications such as roofing tar, paint stains or cement on its body.
 - (vi) "Mobile Home" means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

- (vii) "Motor Home" means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and/or full cooking facilities shall be considered motor homes, including conversion vans in excess of twenty feet (20') in length.
 - (viii) "Trailer" means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.
 - (ix) "Truck" means all vehicles of every kind in excess of three-quarter (3/4) ton rated weight-carrying capacity which are manufactured, designed, marketed or used for transporting goods of any nature. "Truck" shall include, but shall not be limited to "step vans", "panel trucks" or "cargo vans" of any weight, or size; provided, however, that the term "Truck" shall exclude "sport utility vehicles", "mini-vans" or "conversion vans".
- (G) If the Board of Directors is notified, in writing, of a violation of this provision, it shall take such further action as deemed necessary under the circumstances, including towing the vehicle. All expenses associated with enforcing compliance with this provision shall be borne by the Owner of Unit which has violated this provision (whether it be by the Owner, his guest, invitee, tenant, lessee or tenant's guests), including towing charges, storage expenses, costs and attorney's fees incurred by the Association. Such charges, if unpaid after thirty (30) days of demand, shall be assessed as an individual assessment against the Living Unit and collectable in the same manner as any other assessments, including lien and foreclosure. The remedies provided herein are cumulative and in addition to any other remedy provided in the Declaration, Association's Bylaws, Rules and Regulations, or Florida Law.

11.4 Garages. No garage shall ever be permanently enclosed or converted to other uses, including without limitation use as a living area.

11.5 Trash. Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse. Solid containers such as the trash and recycling receptacles provided by Collier County for such purposes are deemed to be suitable. However, plastic garbage bags are not suitable. All such receptacles shall be screened from public view and from the wind, and shall be protected from animal and other disturbances.

11.6 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations.

11.7 Nuisance. No obnoxious or offensive activity (including but not limited to those which produce obnoxious or offensive lights, sounds or odors) shall be carried on upon any Common Area, Lot or in any Living Unit, nor shall anything be done that is or may become a reasonable source of annoyance or nuisance to other residents. The Board of Directors shall have the right and the power in the exercise of its reasonable discretion to determine what activities or uses constitute nuisances or obnoxious or offensive activity.

11.8 **Pools.** No above ground pools shall be erected, constructed or installed on any Lot.

11.9 **Fences.** No fence, wall or other structure shall be erected on any Lot except as approved in writing by the Board of Directors of the Association.

11.10 **Playground and Basketball Equipment.** No jungle gyms, swing sets, or other playground equipment, including, but not limited to, basketball hoops and backboards shall be permitted on any Lot except as approved in writing by the Board of Directors of the Association.

11.11 **Garage Sales.** No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot, except for sales organized as a Neighborhood sale or as approved by the Board of Directors.

11.12 **Mailboxes.** Mailboxes and their supporting structures shall be substantially uniform in style, appearance and location, and are subject to regulation by the Board.

11.13 **Television, Radio Equipment, Flagpoles And Other Outdoor Antennas.** No outside antennae, satellite receiving dishes, antenna poles, antenna masts, electronic devices, antenna towers or citizen band (CB) or amateur band (ham) antennae shall be permitted, except as approved by the Board of Directors, or except as otherwise permitted by law as to satellite antennae less than twenty four (24) inches in diameter, antennae or aerials to receive over-the-air television broadcast, or antennae designated to receive multichannel, multipoint distribution service, which may be installed at a location approved in writing by the Board of Directors. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved in writing by the Board of Directors. An approved flagpole shall not be used to mount an antenna. It is the intent of this provision to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances, which is sometimes caused by the operation of ham radios, CB base stations or other high-powered broadcasting equipment.

11.14 **Temporary Structures.** No structure of a temporary character shall be constructed or used on any Lot. However, the temporary erection of a tent for special occasions may be allowed, but only after approval by the Board of Directors. No outdoor clothes washing, drying, hanging or storage shall be allowed where visible from the Common Areas or another Residence.

11.15 **Signs.** In order to maintain an attractive appearance, no sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted, or affixed in, on or upon any part of the Properties, by an Owner or occupant unless prior approval of the sign and its placement is obtained from the Board. This restriction includes, without limitation, signs of Realtors, politicians, contractors or subcontractors. The Association reserves the right to restrict the size, color, lettering, height, material and location of signs. The Association shall have the right to remove signs which fail to comply with the standards set by the Association. Notwithstanding the foregoing, each Owner may place a "For Sale" sign in the front and the back of the Lot, so long as those signs comply with the restrictions promulgated by the Association, if any.

11.16 **Wells and Other Water Sources.** Private wells are strictly prohibited, and canal water shall not be withdrawn for irrigation or any other purpose.

11.17 Appearance. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. Sanitary containers shall not be placed outside the Living Unit, except for a reasonable period of time for refuse pickup to be accomplished. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

11.18 Pets. The Owner of each Lot may keep no more than two (2) commonly accepted and domesticated household pets (such as cat, bird or dog) and tropical fish in the Living Unit. The pet must be carried under the Owner's arm, caged or leashed (with the leash held by a human) at all times while outside of the Living Unit or the Lot, in accordance with Collier County Ordinance 93-56, as amended by 94-10. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Properties. **Owners are responsible for the conduct of and the clean-up after their pet(s).** The Board of Directors may adopt further regulations regarding keeping or house of pet(s) upon the Properties. No reptiles, amphibians, poultry or livestock may be kept on the Properties. Pets shall not be left unattended in a garage or outside the interior portions of a Residence.

11.19 Miscellaneous Activity And Use Restriction. The following activity and use restrictions apply to all Owners, Lots and Common Areas.

- (A) The discharge of firearms is prohibited.
- (B) All personal property, including without limitation bicycles, mopeds, motorcycles and play equipment shall be stored in a Residence or a garage except when in use, and may not be left on driveways or Common Areas overnight. No unenclosed exterior storage area shall be permitted.
- (C) Each Owner and Member shall be required to adhere to the storm precautions promulgated by the Association, if any.

12. LEASING OF RESIDENCES: In keeping with the intent to develop a stable residential community, and prevent a motel-like atmosphere, the use and leasing of residential units by their owners shall be restricted as provided in this section. All leases of units must be in writing. A unit owner may lease his unit only in accordance with this Section.

12.1 Term of Lease and Occupancy During Lease Term. No lease may be for a period of less than six (6) months nor more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted unless the extension or renewal has been approved by the Board. No subleasing or assignment of lease rights by the lessee is allowed. No more than four (4) persons may occupy the Living Unit during the lease term.

12.2 Notice of Lease. An Owner intending to make a bona fide lease of his dwelling unit shall give to the Association notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease, together with the name and address of the intended lessee, a copy of the proposed lease and any other information concerning the intended lessee as the Association may require.

12.3 Approval of Lease Renewals. The Association shall have the right to approve all lease extensions or renewals. An owner intending to lease extend or renew a lease of his residential unit shall give to the Association written notice of such intention at least thirty (30) days prior to the first day of the extended or renewed period under the lease together with such information as the Board may reasonably require. After the required notice and all information requested have been provided, the Board shall have ten (10) business days in which to approve or disapprove the proposed lease extension or renewal. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

12.4 Failure to Obtain Approval. Any lease renewal or extension entered into without approval of the Association as required herein may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee with five (5) days notice, without securing consent to such eviction from the owner.

12.5 Other Procedures. Forms for lease notification and applications for authority to extend or renew a lease shall be given to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The Board may in its discretion further regulate leasing procedures so long as the further regulations do not conflict with this Declaration.

12.6 Regulation by Association. All of the provisions of the Declaration, Bylaws, and the Rules and Regulations of the Association pertaining to use and occupancy shall apply to a lessee or guest to the same extent as against an Owner, and a covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Documents, designating the Association as the Owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. The costs associated with obtaining the tenant's compliance or with eviction of the tenant, including attorney's fees, shall be assessed against the Owner.

12.8 Delinquent Assessments During Lease Term. In the event an Owner of a Lot and/or Living Unit is and/or becomes delinquent in the payment of any assessments, fines or other charges and the Living Unit is subject to a lease, the Association shall be entitled to the payment of rent, directly from the tenant, until the delinquency is satisfied in full. Each lease shall provide or be deemed to provide that the rents shall be assigned and made payable directly to the Association in the event of a delinquency. The Association shall advise the tenant by certified mail, return receipt requested, directed to the address of the Living Unit, of its intent to exercise its option hereunder.

13. TRANSFERS OF OWNERSHIP OF LOTS. The transfer of ownership of a Lot shall be subject to the following provisions:

13.1 Forms Of Ownership.

(A) One Person. A Lot may be owned by one natural person whose acquisition of title has been approved to the extent and in the manner elsewhere provided herein.

- (B) **Two or More Persons.** Co-ownership of a Lot by two or more natural persons who are not husband and wife is not prohibited. The intent, however, is to allow the Lot Owner some degree of flexibility in estate, tax or financial planning; and such ownership will not be approved if the apparent effect is to allow an Owner to create circumstances where the Lot may be used as short-term transient accommodations for multiple families. If the Co-Owners are other than husband and wife, the Board shall condition its approval upon the designation of one approved natural person as "primary occupant." The use of the Lot by other persons shall be as if the primary occupant were the only actual Owner. Any change in the designated primary occupant shall be treated as a transfer of ownership of the affected Lot by sale or gift, subject to the provisions in this Section. No more than one such change will be approved in any twelve (12) month period, unless caused by the death of the primary occupant.
- (C) **Ownership By Corporations, Partnership Or Trusts.** A Lot may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the Lot may be used as short-term transient accommodations for several individuals or families. The approval of a trustee, or a corporation, partnership or other business entity as a Lot Owner shall be conditioned upon designation by the Owner of one natural person to be the "primary occupant". The use of the Lot by other persons shall be as if the primary occupant were the only actual Owner. Any change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section. No more than one such change will be approved in any twelve (12) month period, unless caused by the death of the primary occupant.
- (D) **Designation Of Primary Occupant.** Within thirty (30) days after the effective date of this provision, each Owner of a Lot which is owned in the forms of ownership stated in preceding Subsections shall designate a primary occupant in writing to the Association. If any Lot Owner fails to do so, the Board of Directors may make the initial designation for the Owner, and shall notify the Owner in writing of its action. If the ownership of a Lot is such that the designation of a primary occupant is not required, the Lot Owner may, nevertheless, choose to designate one, subject to Board approval.
- (E) **Life Estate.** A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under the Section entitled "Types Of Transfers of Ownership" below. In that event, the life tenant shall be the only Association member for the Lot, and occupancy shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the Lot. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners under this Section above, for purposes of determining voting and occupancy rights.

13.2 Notice To Association. The Association must be notified no later than twenty (20) business days after a transfer of a Lot has taken place. The new owner shall provide the Association with a copy of their deed or other instrument by which they took title and provide the Association with any other information that is reasonably requested.

14. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS. Every Owner, tenant, guest or other invitee shall at all times comply with all the covenants, conditions and restrictions of the Governing Documents including this Declaration, the Articles, Bylaws and Rules and Regulations. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the violation, except in emergencies. The proper interpretation and effect of the Governing Documents shall be as interpreted by the Board of Directors of the Association.

14.1 Legal Action. Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants, conditions and restrictions. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

14.2 Entry By Association. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the land, any construction or violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal. Any costs and expenses incurred by the Association in abatement of any violations, including attorney's fees, shall be assessed against the Owner of said Lot, which assessments, if unpaid, shall become a lien on the Lot and foreclosed, or otherwise collected in the same manner as assessments for common expenses.

14.3 Fines. The Board may impose a fine or fines upon an Owner, tenant, guest, or other invitee for failure of the Owner, his family, guests, invitees, tenants, or employees to comply with any covenant, restriction, rule or regulation contained herein or promulgated pursuant to the Governing Documents.

- (A) **Notice.** The Association shall notify the Owner or person sought to be fined with at least fourteen (14) days notice of the opportunity for an appeals hearing.
- (B) **Appeals Hearing.** A hearing, if requested by the Owner or person sought to be fined, shall be held before a committee of at least three (3) members appointed by the Board, who are not officials, directors or employees of the Association, or the spouse, parent, child, brother or sister of any of the above. The committee, by majority vote, may recommend approval of the fine, dismissal of the fine, or a change in the amount of the fine.

- (C) **Amount Of Fine.** The Board of Directors may impose fines in amounts reasonably related to the severity of the offense and deemed adequate to deter future offenses, not to exceed \$100 per violation, or such other maximum amount permitted by law. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, and thus may exceed in the aggregate, \$1,000 per violation, or such other maximum amount permitted by law.
- (D) **Collection Of Fines.** Fines shall be treated as an assessment due to the Association ten (10) days after written notice to the Owner of the imposition of the fine, as provided above. The filing of an appeal as provided above shall postpone the due date until three (3) days after the written decision of the appeals committee is served on the Owner.
- (E) **Application.** All monies received from fines shall become part of the common surplus.
- (F) **Nonexclusive Remedy.** Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. Outstanding fines, if unpaid after thirty (30) days from the date due, shall be assessed against the Owner of the Lot and/or Living Unit, which assessments may become a lien on the Lot and foreclosed or otherwise collected in the same manner as assessments for common expenses.

14.4 Suspension of Use Rights. The Association may also suspend use rights by following the procedures found in Section 14.3 for levying of fines.

14.5 Attorneys Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, unit owner, Director or Officer of the Association, or the Association to comply with the requirements of Chapter 720 of the Florida Statutes, the governing documents, or the Association's rules and regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorneys fees as may be awarded by the court.

15. AMENDMENTS OF DECLARATION

15.1 Amendments, Proposal. This Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

15.2 Amendments, Vote Required. Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved by the Association members in one or the two methods below.

- (A) Approval shall be granted if approved by at least two-thirds (2/3) of the voting interests of the Association who are present, in person or by proxy, and voting at any annual meeting or a meeting called for that purpose, provided that a copy of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendment has been given to the members in accordance with law.
- (B) Any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members. Approval shall be granted if at least two-thirds (2/3) of the members written consents are in the affirmative. If the requisite number of written consents is received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members. Nothing in this Section affects the rights of members to call a special meeting of the membership, as provided for in the Bylaws or by law. If the vote is taken by the method described in this Section, the list of owners on record with Secretary at the time of mailing the voting materials shall be the list of qualified voters. The written consents used to authorize an action without a meeting shall become part of the Association's records.

15.3 Amendments, Certificate, Recording, Effective Date. A copy of each amendment shall be attached to a certificate attesting that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Official Records where the Declaration was originally recorded, and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment is effective when the certificate and copy of the amendment are recorded in the Official Records of the County.

16. GENERAL PROVISIONS.

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

16.2 Waiver. Any waiver by the Association of any provisions of this Declaration or breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

16.3 Severability. If any section, subsection, sentence, clause, phrase or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

16.4 Headings And Capitalization. The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and do not affect the meaning or interpretation of the provisions of this Declaration.

16.5 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner in the records of the Association at the time of such mailing. The Owner bears the responsibility for notifying the Association of any change of address.

16.6 Interpretation. The Board of Directors is responsible for interpreting the provisions of this Declaration and its recorded exhibits. Its interpretation shall be binding upon all parties, unless it is wholly unreasonable. A written opinion rendered by Association legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

EXHIBITS TO CONSOLIDATED, AMENDED AND RESTATED DECLARATION

The following exhibit was recorded on May 21, 1996, together with the Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris at Official Record Book 2186, Page 0360 et seq., Public Records of Collier County, Florida. This exhibit, as previously amended to date, is hereby incorporated by reference as an exhibit to the attached Consolidated, Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris.

EXHIBIT "A" - LEGAL DESCRIPTION OF NEIGHBORHOOD

The following exhibit was recorded on May 21, 1996, together with the Declaration of Covenants, Conditions, Restrictions and Easements for the Stella Maris Single Family Community at Official Record Book 2186, Page 0414 et seq., Public Records of Collier County, Florida. This exhibit, as previously amended to date, is hereby incorporated by reference as an exhibit to the attached Consolidated, Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris.

EXHIBIT "A" - LEGAL DESCRIPTION OF NEIGHBORHOOD

In addition, the following Exhibit is being added to the attached Consolidated, Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris and is being recorded herewith:

**EXHIBIT "B" - LEGAL DESCRIPTION OF THE SEAWALL PROPERTY
EXHIBIT "C" - JOINDER BY OWNER OF SEAWALL PROPERTY**

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

**EXHIBIT "D" - ARTICLES OF INCORPORATION OF ASSOCIATION
EXHIBIT "E" - BYLAWS OF THE ASSOCIATION**



*** OR: 2779 PG: 2190 ***

150 Escalante Way, Naples, Florida 34110 Phone 941.264.2000 Fax 941.264.2800

HIM PROJECT #2001513

1/25/11

REF DWG #B-3190

PROPERTY DESCRIPTION

A PORTION OF TRACT C OF PORT OF THE ISLANDS (THE CAYS) PHASE II ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 21 AT PAGES 1 THROUGH 4 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

BEGIN AT THE SOUTHWEST CORNER OF LOT 71 OF STELLA MARIS ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 26 AT PAGES 26 AND 27 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, THENCE RUN N 00°19'09"E, ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 104.98 FEET; THENCE RUN N.89°41'56"W, ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 828.98 FEET; THENCE RUN N.00°19'50"E, ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 340.55 FEET; THENCE RUN S 89°41'59"E, ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 803.57 FEET; THENCE RUN N.00°17'11"E, ALONG THE BOUNDARY OF SAID PLAT OF STELLA MARIS, FOR A DISTANCE OF 39.39 FEET; THENCE RUN N 89°42'49"W FOR A DISTANCE OF 9.59 FEET TO A POINT ON THE BOUNDARY OF TRACT C OF PORT OF THE ISLANDS (THE CAYS) PHASE II ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 21 AT PAGES 1 THROUGH 4 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE RUN S.00°17'11"W, ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 29.69 FEET; THENCE RUN N.89°41'59"W, ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 803.56 FEET; THENCE RUN S.00°19'50"W, ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 360.55 FEET; THENCE RUN S 89°41'56"E, ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 828.56 FEET; THENCE RUN S.00°19'09"W, ALONG THE BOUNDARY OF SAID TRACT C, FOR A DISTANCE OF 94.68 FEET; THENCE RUN S.89°40'51"E, FOR A DISTANCE OF 10.01 FEET TO THE POINT OF BEGINNING; CONTAINING 0.483 ACRE, MORE OR LESS

THIS PROPERTY IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD

BEARINGS REFER TO THE WESTERLY BOUNDARY OF LOT 71 OF STELLA MARIS ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 26 AT PAGES 26 AND 27 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA, AS BEING N.00°19'09"E.

HOLE, MONTES, INC.
CERTIFICATE OF AUTHORIZATION LB #1772

BY  P.L.S. #3741
THOMAS J. GARRIS STATE OF FLORIDA

W:\2006\2011\1111\1111\1111.dwg

JOINDER BY OWNER OF SEAWALL PROPERTY

Stella Maris Seawall, L.L.C. is the sole owner of the property legally described in Exhibit "A" to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris by virtue of the Special Warranty Deed recorded at O.R. Book 2779, at Page 2188 in the Public Records of Collier County, Florida.

Stella Maris Seawall, L.L.C., a Florida Limited Liability Company, hereby consents to and joins in the execution of the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris, which consolidates, amends and restates the Declarations that were originally recorded as follows:

Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris was recorded in Official Record Book 2186, at Pages 0360 *et seq.*, of the Official Records of Collier County, Florida, and

Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris Single Family Community was recorded in Official Record Book 2186, at Pages 0414 *et seq.*, of the Official Records of Collier County, Florida,

for the purpose of subjecting the property legally described in Exhibit "A" to the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Stella Maris to the provisions contained therein, as they may be amended as set forth therein.

Dated this 1st day of June, 2002.

Witnesses:

[Signature]
Signature of Witness
Anja DePauw
Print name of Witness

[Signature]
Signature of Witness
CHARLY P. KRANS
Print name of Witness

OWNER OF SEAWALL PROPERTY:


STELLA MARIS SEAWALL, L.L.C.
[Signature]
James E. Morris, Managing Member

[Signature]
Dale M. Lambert, Managing Member

[Signature]
George H. Bond, Managing Member

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 1st day of June, 2002, by James E. Morris, Dale M. Lambert and George H. Bond as Managing Members of Stella Maris Seawall, L.L.C., a Florida Limited Liability Company, for and on behalf of the Limited Liability Company, who (choose one) () are personally known to me or () have produced FL driver's license as identification and did not take an oath.

 Anja C DePauw
My Commission CC946581
Expires June 18, 2004

[Signature]
Signature of Notary-Public
Anja C. DePauw
Print name of Notary Public (SEAL)
My Commission Expires: 06/18/04

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

AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC.
(F/K/A STELLA MARIS MASTER ASSOCIATION, INC.)

Pursuant to Section 617.1007, Florida Statutes, the Articles of Incorporation of Stella Maris Master Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on May 14, 1996 are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1005, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles other than the inclusion of amendments adopted pursuant to Section 617.1006 and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Stella Maris Master Homeowners' Association, Inc. (formerly known as Stella Maris Master Association, Inc.), shall henceforth be as follows:

ARTICLE I

NAME. The name of the corporation formerly known as Stella Maris Master Association, Inc. shall be changed to Stella Maris Master Homeowners' Association, Inc., sometimes hereinafter referred to as the "Association."

ARTICLE II

PRINCIPAL OFFICE. The principal office of the corporation is located at, c/o 12734 Kenwood Lane, Suite 49, Fort Myers, Florida 33907. The principal office may be changed by the Board of Directors.

ARTICLE III

PURPOSE AND POWERS. This Association will not permit pecuniary gain or profit and will make no distribution of its income to its members, officers or Directors. It is a corporation not for profit organized on a non-stock basis for the purpose of establishing a corporate residential neighborhood homeowners association which will, subject to a Declaration of Covenants, Conditions, Restrictions and Easements recorded in the Public Records of Collier County, Florida, have the powers described herein. The Association shall have all of the common law and statutory power of a Florida corporation not for profit consistent with these Articles and with the Declaration of Covenants, Conditions and Restrictions to which these Articles shall be an exhibit; and it shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential neighborhood, subject to the Declaration, as it may from time to time be amended, including but not limited to the power to:

- (A) Exercise any and all powers, rights and privileges which a corporation organized under Chapters 617 and 720, Florida Statutes, may now or hereafter have or exercise; subject always to the Declaration, as amended from time to time;
- (B) Fix, levy, collect and enforce payment by any lawful means all charges, assessments or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property of the corporation;
- (C) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- (D) Borrow money, and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
- (E) Own, operate, maintain, and repair the Water Management Systems.

ARTICLE IV

MEMBERSHIP. Every person or entity who is a record Owner of a fee simple or a fractional undivided fee simple interest in any Lot which is subject, by covenants or record to the jurisdiction and powers of the Association (hereinafter referred to as a "Lot"), shall be a member of the Association. The foregoing is not intended to include persons and entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the aforesaid jurisdiction and powers of the Association. All membership rights and duties shall be subject to and controlled by the Declaration, which is in the form of a covenant running with the land.

ARTICLE V

VOTING RIGHTS. All members of the Association shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but the single vote for such Lot shall be exercised as they among themselves determined, and in no event shall more than one vote be cast with respect to any Lot.

ARTICLE VI

DIRECTORS.

- (A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors.
- (B) Directors shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

- (C) The business of the Association shall be conducted by the officers designated in the Bylaws.

ARTICLE VII

OFFICERS. The affairs of the Association shall be administered by a President, a Secretary and a Treasurer and such other officers as may be determined in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the Annual Meeting and shall serve at the pleasure of the Board of Directors.

ARTICLE VIII

TERM. The term of the Association shall be perpetual.

ARTICLE IX

BYLAWS. The Bylaws of the Association shall be adopted by the Board of Directors but may be altered, amended or rescinded by resolution adopted by a majority of the Board following the procedure for "Amendments" found in Article X of this document.

ARTICLE X

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

- (A) **Proposal.** Amendments to these Articles may be proposed by a majority of the Board or by petition to the Board signed by at least one-fourth (1/4) of the voting interests of the Association.
- (B) **Procedure.** A proposed amendment must be submitted to a vote of the members not later than next annual meeting for which proper notice can still be given.
- (C) **Vote Required.** Except as otherwise required by Florida law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by at least two-thirds (2/3) of the voting interests of the Association who are present, in person or by proxy, and voting at any annual meeting or a meeting called for that purpose, or if it is approved in writing by at least two-thirds (2/3) of the voting interest without a meeting, as authorized in the Bylaws, provided that notice of any proposed amendment must be given to all members of the Association, and the notice must contain the current wording of the Section and the full text of the proposed amendment.
- (D) **Effective Date.** An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE X

INDEMNIFICATION. To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved the following:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.
- (D) Wrongful conduct by Directors or officers in a proceeding brought by or on behalf of the Association. In the event of an out-of-court settlement, the right to indemnification shall not apply unless a majority of the disinterested Directors approves the settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of all other rights to which a Director or officer may be entitled.

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

AMENDED AND RESTATED BYLAWS

OF

**STELLA MARIS MASTER HOMEOWNERS' ASSOCIATION, INC.
(F/K/A STELLA MARIS MASTER ASSOCIATION, INC.)**

1. **GENERAL.** These are the Amended and Restated Bylaws of Stella Maris Master Homeowners' Association, Inc. (formerly known as Stella Maris Master Association, Inc.), hereinafter the "Association", a corporation not for profit organized under the laws of Florida for the purpose of operating a homeowners association pursuant to Chapter 720 of the Florida Statutes. All prior Bylaws are hereby revoked and superseded in their entirety.

- 1.1 **Principal Office.** The principal office of the Association is c/o 12734 Kenwood Lane, Suite 49, Fort Myers, Florida 33907. The principal office may be changed by the Board of Directors.
- 1.2 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.
- 1.3 **Definitions.** Certain words and phrases used in these Bylaws are defined in the Declaration of Covenants, Conditions, Restrictions and Easements of Stella Maris (the "Declaration"), to which these Bylaws are recorded as an Exhibit, unless the context clearly requires a different meaning.

2. **MEMBERS; VOTING RIGHTS.** The members of the Association are the record Owner(s) of legal title to the Lots. If a Lot is subject to a contract for deed or a life estate, the contract vendee or life tenant, respectively, shall be deemed to be the Owner for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events:

- (A) Approval by the Association for the transfer of ownership, if required by the Declaration (such approval is not required as of the effective date of these Amended and Restated Bylaws).
- (B) Recording in the Public Records of a Deed or other instrument conveying or evidencing legal title to the new member.
- (C) Delivery to the Association of a copy of the recorded Deed or other evidence of title.

BYLAWS

-1-

Exhibit "E"

(D) Delivery to the Association, if required, of a written designation of a primary occupant. Membership in the Association is appurtenant to, runs with, and cannot be separated from the real property interest upon which membership is based. Each members' share of beneficial ownership of the common surplus is the same as his share of liability for assessments, as provided in the Declaration.

2.1 **Voting Rights.** The members of the Association are entitled to one (1) vote for each Lot owned by them. The total number of votes equals the total number of Lots. There are fifty (50) Lots, therefore the number of voting interests is fifty (50). The vote of a Lot is not divisible. The right to vote may be suspended if a member is delinquent, in excess of ninety (90) days, in the payment of any monies due to the Association. If a Lot is owned by one natural person, his right to vote shall be established by the record title. If a Lot is owned jointly by two or more natural persons, regardless of whether they are acting as trustees, that Lot's vote may be cast by any one of the record Owners. If two or more Owners of a Lot do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the Owner of a Lot is not a natural person, the vote of that Lot shall be cast by the primary occupant of the Residence designated as set forth in the Declaration.

2.2 **Approval or Disapproval of Matters.** Whenever the decision or vote of a Lot Owner is required upon any matter, whether the subject of an Association meeting or not, the decision or vote shall be expressed or cast by any person authorized in Section 2.1 above to cast the vote of that Lot if present at an Association meeting, unless the joinder of all record Owners is specifically required.

2.3 **Termination of Membership.** Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member.

3. **MEMBERS' MEETINGS.**

3.1 **Annual Meeting.** The annual meeting of the members shall be held in Collier County, Florida, during the month of February or March each year on a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

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

- 3.3 **Notice Of Meetings.** Notice of meetings of the members, stating the time, date and place of the meeting must be mailed to the Owner(s) of each Lot at the address that appears on the books of the Association, or may be provided by personal delivery. The member bears the responsibility for notifying the Association of any change of address. The notice must be mailed or delivered at least fourteen (14) days before the date of the meeting. Unless the law or the governing documents expressly require otherwise, notice of special meeting must include a description of the purpose or purposes for which the meeting is called.
- 3.4 **Quorum.** A quorum at meetings shall be attained by the presence, either in person or by proxy, of a least thirty percent (30%) of the voting interests of the Association.
- 3.5 **Vote Required.** The acts approved by a majority of the votes cast at a meeting at which a quorum has been attained are binding upon all members for all purposes, except where a higher vote is required by law, or by any provision of the governing documents.
- 3.6 **Proxies.** Votes at a meeting may be cast in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and/or any lawful adjournment of that meeting. No proxy shall be valid longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy is revocable at the pleasure of the person executing it. To be valid a proxy must be in writing, dated, signed by the person authorized to cast the vote, and specify the date, time and place of the meeting for which it is given. Proxyholders must be a members.
- 3.7 **Adjourned Meetings.** Any duly called meeting of the members may be adjourned, by the majority of the voting interests present, regardless of whether a quorum has been attained, and may be reconvened later at a specific time and place. When a meeting is so adjourned, it shall not be necessary to give formal notice of the time and place of its continuance, if that information is announced at the meeting being adjourned. Any business which might have been conducted at the meeting as originally scheduled may instead be conducted at the continuance, provided a quorum has been attained.
- 3.8 **Order of Business.** The order of business at members meetings shall be generally as follows:
- (A) Determination of the existence of a quorum.
 - (B) Reading or dispensing with reading minutes from the last members meeting.
 - (C) Reports of Officers. (Financial Report)
 - (D) Reports of Committees.
 - (E) Election of Directors (Annual Meeting Only).
 - (F) Unfinished Business.
 - (G) New Business.
 - (H) Adjournment.
- 3.9 **Minutes.** Minutes of all meetings of the members and of the Board of Directors shall be kept in a businesslike manner, in a book or books, and must be available for inspection and copying by members or their authorized representatives at all reasonable times.

3.10 Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of Association meetings, when not in conflict with the law or the governing documents. The President may appoint a Parliamentarian for assistance and advice, but the President's decision on questions of Parliamentary Procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.11 Action By Members Without Meeting. Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting, if written consents or other instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting. If the requisite number of written consents is received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved by vote of the members at a meeting held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall meet to tabulate the votes and send written notice of the action taken to all members. Nothing in this Section affects the rights of members to call a special meeting of the membership, as provided for in these Bylaws or by law. If the vote is taken by the method described in this Section, the list of Owners on record with the Secretary at the time of mailing the voting materials shall be the list of qualified voters. The written consents used to authorize an action without a Meeting shall become part of the Association's records.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association is by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to approval or consent of the members only when specifically required.

4.1 Number And Terms of Service. The number of Directors which shall constitute the whole Board of Directors shall be five (5). To maintain experienced Board members, Directors will be elected for staggered terms. The first election held following this revision of the Bylaws, the Director's terms will be determined by the votes received for each Director. Of the Directors elected; the three (3) receiving the most votes will serve a two (2) two year term, while the other two will serve a (1) year term. The second election held following this revision of the Bylaws, and thereafter, all Directors will be elected for a (2) year term. Each Director's term ends at the final adjournment of the annual meeting at which his successor will be duly elected, or at such other time as may be provided by law. Directors shall be elected by the members as described in Section 4.3 below, or in the case of vacancy, as provided in Section 4.4 below.

4.2 Qualifications. Each Director must be a member of the Association or primary occupant for a Lot.

- 4.3 Nominations And Elections.** At each annual meeting the members shall elect as many Directors as there are regular terms of Directors expiring or vacancies to be filled. The nominating committee, if any, shall submit its recommended nominees for the office of Director on the floor at the annual meeting, at which time any other eligible person may also be nominated as a candidate. Directors shall be elected by a plurality of the votes cast at the annual meeting. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected. The candidates receiving the highest number of votes shall be declared elected, except that a run-off shall be held to break a tie vote. In the election of Directors, there shall be appurtenant to each unit as many votes for Directors as there are Directors to be elected, but no unit may cast more than one vote for any candidate, it being the intent hereof that voting for Directors shall be non-cumulative.
- 4.4 Vacancies On The Board.** If the office of any Director becomes vacant for any reason, a successor or successors to fill the remaining unexpired term or terms shall be appointed or elected by a majority of the remaining Directors, though less than a quorum. The successor shall hold office for the remaining unexpired term.
- 4.5 Removal Of Directors.** Any Director may be removed from office, with or without cause, by the vote or agreement in writing of a majority of the voting interests. The notice of a meeting of the owners to recall one or more Directors must name the specific Director(s) sought to be removed, and a separate vote for each Director sought to be removed shall be taken. Where removal is sought by written agreement, a separate agreement is required for each Director to be removed. Any Director who is removed from office is not eligible to stand again for election to the Board, or be appointed to the Board, until the next annual election. A Director who is removed from office shall turn over to the Association within 72 hours any and all records and other property of the corporation in his possession. If a Director who is removed does not relinquish his office or turn over records as required, the circuit court in the county may summarily order the Director to relinquish his office and turn over corporate records upon application of any Owner. In any such action, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.
- 4.6 Board Meetings.** A meeting of the Board of Directors occurs whenever a quorum of the Board gathers to conduct Association business. All meetings of the Board must be open to all members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all Board meetings must be posted in a conspicuous place at least forty-eight (48) hours in advance of every meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place, notice of each Board meeting must be mailed or delivered to each member at least seven (7) days before the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessment. Any Owner may tape-record or videotape meetings of the Board of Directors and meetings of the members. The Board of Directors may adopt reasonable rules governing the taping of meetings of the Board and the membership.
- 4.7 Waiver Of Notice By Directors.** Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. If all Directors are present at a meeting, no notice to Directors shall be required.

- 4.8 **Quorum Of Directors.** A quorum at a Board meeting exists only when a majority of all Directors are present in person. Directors may participate in any meeting of the Board, or meeting of an executive or other committee by means of a conference telephone call or other similar communicative arrangement whereby all persons present at the meeting site can hear and speak to all other persons, and participation by this means is deemed equivalent to presence in person at a meeting.
- 4.9 **Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum is then present, any business that might have been transacted at the meeting originally called may be transacted without further notice.
- 4.10 **Presiding Officer.** The President of the Association, or in his absence, the Vice-President, shall preside at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.
- 4.11 **Vote Required.** The acts approved by a majority of the Directors present and voting at a Board meeting at which a quorum has been attained shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the governing documents or by law. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in electing officers. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the point of view that prevails on any question, unless he voted against such action or abstained from voting because of an asserted conflict of interest, which must be noted in the minutes.
- 4.12 **Directors' Fees and Reimbursement Of Expenses.** No compensation or fees shall be paid to Directors for their service as Directors. Directors may be reimbursed for out-of-pocket expenses related to the proper discharge of their respective duties.
- 4.13 **Committees.** The Board of Directors may appoint from time to time such standing or temporary committees as the Board may deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. The meetings of any committee that is vested with the authority to make a final decision regarding the expenditure of Association funds and any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the Association must be conducted with the same formalities as required for meetings of the Board.
- 4.14 **Emergency Powers.** In the event of an "emergency" as defined in Section 4.14(G) below, the Board of Directors may exercise the following emergency powers, and any other emergency powers authorized by Section 617.0207, Florida Statutes (1998), as amended from time to time.
- (A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Association.

- (B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.
- (C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practicable manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.
- (D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Association shall bind the Association and shall have the rebuttable presumption of being reasonable and necessary.
- (E) Any officer, Director, or employee of the Association, acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws, shall incur no liability for doing so, except in the case of willful misconduct.
- (F) These emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.
- (G) For purposes of this Section 4.14, an "emergency" exists only while the Neighborhood, or the immediate geographic area in which the Neighborhood is located, is subjected to:
 - (1) a state of emergency declared by law enforcement authorities;
 - (2) a hurricane warning;
 - (3) a partial or complete evacuation order;
 - (4) designated by federal or state government as a "disaster area;" or
 - (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Neighborhood, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

5. OFFICERS. Officers are elected by a majority of the Board at its first meeting after every election, and serve at the pleasure of the Board. The executive officers of the Association shall be a President, a Vice-President, a Treasurer, and a Secretary, all of whom must be Directors, and shall be elected annually by the Board of Directors. Any officer may be removed from office, with cause, by a majority of the Directors at any meeting where such action is identified in the Agenda. Any person, except the President, may hold two or more offices. The Board of Directors may, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice-President.

- 5.1 **President.** The President shall be the chief executive officer of the Association; he shall preside at all meetings of the members and Directors, shall be *an ex-officio* member of all standing committees, shall have general and active management of the business of the Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts requiring the seal of the Association, except where such are permitted by law to be otherwise signed and executed, and the power to execute is delegated by the Board of Directors to some other officer or agent of the Association.
- 5.2 **Vice-Presidents.** The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall prescribe.
- 5.3 **Secretary.** The Secretary shall attend meetings of the Board of Directors and meetings of the members and shall be responsible for the recording of all votes, and the minutes of all proceedings, in a book to be kept for the purpose, and shall perform like duties for standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the governing documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one is designated.
- 5.4 **Treasurer.** The Treasurer is responsible for the safekeeping of Association funds and assets, budget preparation, and the keeping of full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, a manager or a management company, if one has been designated. If one has been designated, then it shall be the Treasurer's duty to oversee that such matters are tended to in an efficient and business-like manner.
- 5.5 **Compensation Of Officers.** No compensation shall be paid to any member for services as an officer of the Association.
6. **FISCAL MATTERS.** The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions.
- 6.1 **Depository.** The Association shall maintain its funds in accounts designated from time to time by the Board. The Board shall exercise due care to preserve the principal in such accounts. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles.

- 6.2 Accounts and Accounting Procedures.** The financial and accounting records of the Association must be kept according to generally accepted accounting principals, and kept for a period of at least seven (7) years. The financial and accounting records must include:
- (A) Accurate, itemized, and detailed records of all receipts and expenditures.
 - (B) A current account and a period statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - (C) All tax returns, financial statements, and financial reports of the Association.
 - (D) Any other records that identify, measure, record or communicate financial information.
- 6.3 Budget.** The Board of Directors shall adopt prior to the end of each fiscal year, a budget of common expenses for the next fiscal year. A copy of the proposed budget and a notice stating the time, date and place of the meeting of the Board at which the budget will be considered shall be mailed to or served on each Owner not less than fourteen (14) days prior to that meeting. The proposed budget shall be detailed and show the amounts budgeted by accounts and expense classifications, as well as the actual expenses in the previous fiscal year for the same accounts and expense classifications.
- 6.4 Reserves.** The Board may establish in the annual budget one or more reserve accounts for cash flow shortfalls, capital expenditures, and deferred maintenance. The purpose of reserves is to provide financial stability and to avoid the need for special assessments on a frequent basis. The amounts proposed to be so reserved shall be shown in the proposed annual budget. These funds may be transferred between reserve accounts as necessary, upon majority vote of the Board of Directors. Transferred monies shall be returned to the original account as soon as practicable.
- 6.5 Regular Assessments.** Regular assessments based on the adopted budget shall be paid quarterly, in advance, due on the first day of each quarter. Written notice of each installment shall be sent to members at least ten (10) days prior to the due date, but failure to send or receive the notice does not excuse the obligation to pay. In its discretion, the Board may require payment in sem-annual or annual installments instead.
- 6.6 Special Assessments.** Special assessments may be imposed by the Board of Directors to meet unusual, unexpected, unbudgeted, or non-recurring expenses, or for such other purposes as are authorized by the Declaration and these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving the assessment. The notice to owners that a special assessment has been adopted must state the specific purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or credited back to the members' accounts. No special assessment exceeding in the aggregate fifteen percent (15%) of the total annual budget, including reserves, may be levied in any calendar year without the prior

approval of a majority of the voting interests of the Association present, in person or by proxy, at a meeting called for the purpose. The funds collected must be spent for the stated purpose(s). However, upon completion of the stated purpose(s), any excess funds will be considered common surplus.

- 6.7 **Fidelity Bonds.** The President, Secretary, Treasurer, and any persons who are authorized to sign checks, shall be bonded in such amounts as may be required by law or by the Board of Directors. The premiums on such bonds shall be a common expense.
- 6.8 **Financial Reporting.** The Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year, and shall, within ten (10) business days after the report is prepared, provide a copy to each member, or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial report must consist of either:
- (A) Financial statements presented in conformity with generally accepted accounting principles; or
 - (B) A financial report of actual receipts and expenditures, cash basis, which report must show:
 - (1) The amount of receipts and expenditures by classification; and
 - (2) The beginning and ending cash balances of the Association.
- 6.9 **Audit.** A formal, certified audit of the accounts of the Association, if required by law, by vote of a majority of the voting interests, or by a majority of the Board of Directors, shall be made by a certified public accountant, and a copy of the audit report shall be available to all Owners.
- 6.10 **Application Of Payments.** All payments on account by an Owner shall be applied first to interest, then to late payment fees, then to attorney's fees and costs, then to other charges, and finally to unpaid regular and special assessments in order they first came due.
- 6.11 **Fiscal Year.** The fiscal year of the Association begins on the first day of January of each year. The fiscal year may be changed by the Board to accommodate a reasonable business purpose.

7. **RULES AND REGULATIONS; USE RESTRICTIONS.** The Board of Directors may from time to time adopt and amend reasonable rules and regulations (if any) governing the operation, use, maintenance, management and control of the Association Common Areas and the operation of the Association. Copies of such rules and regulations shall be furnished to each Owner. The Board shall have the power to impose fines and suspensions of common area use privileges, as further provided in Section 14.3 of the Declaration (Entitled "Fines"), for violations of the rules and regulations.

8. **AMENDMENT OF BYLAWS.** Except as otherwise provided by law, amendments to these Bylaws shall be proposed and adopted in the following manner.

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

8.2 **Procedure.** If any amendment to these Bylaws is so proposed by the Board or the members, the proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be reasonably given. The full text of any proposed amendment must be given to the members with notice of the meeting.

8.3 **Vote Required.** Except as otherwise provided by law, or by specific provision of the governing documents, a proposed amendment to these Bylaws shall be adopted if it is approved by at least a majority of the voting interests of the Association who are present, in person or by proxy, and voting at any annual meeting or a meeting called for that purpose.

8.4 **Effective Date, Recording.** A copy of each adopted amendment shall be attached to a certificate attesting that the amendment was duly adopted, which certificate shall be signed by the President or Vice President of the Association. The certificate must identify the book and page of the Official Records where the Declaration of Covenants was originally recorded. The amendment shall become effective when the certificate and copy of the amendment are recorded in the Official Records of Collier County, Florida.

9. **MISCELLANEOUS.**

9.1 **Gender, Number.** Whenever a masculine or singular pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter, singular or plural, as the context requires.

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

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