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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

merger/cc

MAR 09 2016
I ALBRITTON

COVER LETTER

TO: Amendment Section
Division of Corporations

SUBJECT: Mariner's Club Homeowners Association, Inc.

(Name of Surviving Corporation)

The enclosed Articles of Merger and fee are submitted for filing.

Please return all correspondence concerning this matter to following:

Ryan D. Poliakoff, Esq.

(Contact Person)

Backer Aboud Poliakoff & Foelster LLP

(Firm/Company)

400 S. Dixie Highway, Suite 420

(Address)

Boca Raton, FL 33432

(City/State and Zip Code)

For further information concerning this matter, please call:

Ryan D. Poliakoff

(Name of Contact Person)

At (⁵⁶¹) 361-8535

(Area Code & Daytime Telephone Number)

☒ Certified copy (optional) \$8.75 (Please send an additional copy of your document if a certified copy is requested)

STREET ADDRESS:

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, Florida 32301

MAILING ADDRESS:

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314



FLORIDA DEPARTMENT OF STATE
Division of Corporations

February 25, 2016

RYAN D. POLIAKOFF, ESQ.
BACKER ABOUND POLIAKOFF & FOELSTER LLP
400 S. DIXIE HIGHWAY - STE. 420
BOCA RATON, FL 33432

SUBJECT: MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.
Ref. Number: N00000004348

We have received your document for MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC. and your check(s) totaling \$83.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

The application/form submitted does not meet the requirements of this office; please complete the attached application/form.

Bylaws are not filed with this office. Please retain them for your records.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Irene Albritton
Regulatory Specialist II

Letter Number: 816A00003892

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16 MAR -8 PM 3:12

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2016 MAR -8 AM 8:07

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER

(Pursuant to Sections 617.1105, and 607.1109, Fla. Stat.)

1. The undersigned corporation, **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.**, a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Florida, together with **MARINER'S CLUB KEY LARGO, INC.**, a for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Florida (hereinafter collectively referred to as the "Constituent Corporations") have adopted a Plan of Merger.
2. Pursuant to Sections 617.1105, Fla. Stat. and 607.1109, Fla. Stat., attached hereto and made a part hereof is the Plan of Merger with an Amendment to the Articles of Incorporation of the Surviving Corporation appended as Exhibit "B" thereto (the "Amendment").
3. The Surviving Corporation under the Plan of Merger is **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.**, a not-for-profit corporation.
4. The Plan of Merger and Amendment were adopted by the Board of Directors of **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.** at a meeting held on November 12, 2015, pursuant to Section 617.1103, and Chapter 720., Fla. Stat., and were adopted by the Members of **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.** at a meeting held on December 12, 2015, by a sufficient number of votes cast for approval pursuant to the governing documents of said corporation.
5. The Plan of Merger was adopted by the Board of Directors of **MARINER'S CLUB KEY LARGO, INC.** at a meeting held on November 12, 2015, pursuant to Section 607.1103, Fla. Stat., and was adopted by the Members of **MARINER'S CLUB, INC.** at a meeting held on December 12, 2015, by a sufficient number of votes cast for approval pursuant to the governing documents of said corporation.
6. The Effective Date of the merger of the Constituent Corporations shall be the date of filing of the Articles of Merger with the Department of State.

Dated this 15 day of February, 2016.

MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.

By: [Signature]
Print Name: Steven W. Stenmark
Title: President

PLAN OF MERGER

THIS PLAN OF MERGER dated December 20, 2015 ("Plan of Merger"), is made between **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.** ("Association") and **MARINER'S CLUB KEY LARGO, INC.** ("Club"), such corporations being hereinafter collectively referred to as the "Constituent Corporations:"

WHEREAS, Association is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, having been incorporated on June 29, 2000, as a not-for-profit corporation pursuant to Chapter 617, Fla. Stat., the members of which are entitled to vote on this Plan of Merger; and

WHEREAS, Club is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida, having been incorporated on June 29, 2000 as Mariner's Club Key Largo, Inc., as a for-profit corporation pursuant to Chapter 607, Fla. Stat., the members of which are entitled to vote on this Plan of Merger; and

WHEREAS, the Board of Directors of Association and the Board of Directors of Club deem it advisable and in the best interests of said corporations that Club be merged with and into Association as authorized by Section 617.1101(1), Fla. Stat. and 607.1108, Fla. Stat., pursuant to the terms hereinafter set forth; and

WHEREAS, on November 12, 2015, greater than two-thirds of the Board of Directors of Association have adopted a Resolution approving this Plan of Merger; and

WHEREAS, on November 12, 2015, greater than a majority of the Board of Directors of Club have adopted a Resolution approving this Plan of Merger; and

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreement herein contained, and for the purpose of setting forth the terms and conditions of this Plan of Merger and the mode of carrying this merger into effect and such other details and provisions as are deemed necessary or desirable, the parties hereto have agreed, subject to the requisite approvals of the Members of each corporations and other conditions as hereinafter set forth, as follows:

1. The above recitations are true and correct and incorporated herein as if fully set forth below.
2. The Effective Date of the merger of the Constituent Corporations shall be the date of filing with the Department of State, as provided in the Articles of Merger attached hereto as Exhibit "A" and made a part hereof ("Articles of Merger").
3. On the Effective Date:

- a. Club shall be merged with and into Association. Association shall be and is hereby designated as the "Surviving Corporation."
- b. The Registered Agent of the Surviving Corporation shall be Samuel Persaud, Esq., 9100 South Dadeland Blvd., Suite 400, Miami, FL 33156.
- c. The Surviving Corporation shall continue to be a Florida not-for-profit corporation pursuant to Section 617.0302(16), Fla. Stat.
- d. The Surviving Corporation shall continue to be defined as a "Homeowners' Association" pursuant to Section 720.301(9) Fla. Stat.
- e. The legal existence of the entity formerly known as the Mariner's Club Key Largo, Inc. shall be extinguished.
- f. The Articles of Incorporation of the Surviving Corporation shall be the Articles of Incorporation of the Association, as amended and restated in accordance with those certain Amended and Restated Articles of Incorporation attached hereto as Exhibit "B" and made a part hereof ("Amended and Restated Articles").
- g. The Bylaws of the Surviving Corporation shall be the Bylaws of the Association, as amended and restated in accordance with those certain Amended and Restated Bylaws attached hereto as Exhibit "C" and made a part hereof ("Amended and Restated Bylaws").
- h. The Declaration of Covenants, Conditions and Restrictions of the Surviving Corporation shall be amended and restated in accordance with the Declaration of Covenants, Conditions and Restrictions of the Association, attached hereto as Exhibit "D" and made a part hereof ("Amended and Restated Declaration").
- i. At the Effective Date, all members in good standing of the Club who are members of the Association shall remain members of the Surviving Corporation, with rights, privileges and responsibilities consistent with the status of each Member as further described in the Amended and Restated Articles, the Amended and Restated Bylaws, and the Amended and Restated Declaration.
- j. Each Equity Member of the Club possesses a single share of Preferred Stock, for which the shareholder has paid a membership contribution to the Club, which shareholders are not entitled to dividends or distributions, and which membership contribution is fully refundable to the Equity Member upon valid transfer of the Membership pursuant to

Article XII, Section 9 of the Club's pre-merger By-Laws. At the Effective Date, each share of Preferred Stock shall convert into a single Recreational Facilities Membership, and the shareholder's membership contribution shall remain and be defined as a fully-refundable Membership Contribution to the Association, pursuant to the Amended and Restated Bylaws of the Association.

- k. The Surviving Corporation shall post-merger: (i) possess all of the rights, privileges, powers and franchises, (ii) be subject to the all the restrictions, disabilities and duties, (iii) own and control all property, real, personal and mixed, (iv) be responsible for any and all debts due on whatever account, and (v) retain rights in any and all claims or actions, arising from, related to, assumed, assigned, owned or controlled by each Constituent Corporation as provided in Section 617.1106, Fla. Stat. and Section 607.11101, Fla. Stat..
- l. All corporate acts, plans, policies, contracts, approvals and authorizations of Club operated or approved by its Members, Board of Directors and authorized committees elected or appointed by said Board of Directors, Officers and agents, that are valid and effective prior to the Effective Date, shall be taken for all purposes as the acts, plans, policies, contracts, approvals and authorizations of the Surviving Corporation and shall be effective and binding thereon as the same were with respect to Club.
- m. The assets, liabilities, reserves and accounts of each Constituent Corporation shall be recorded on the books of the Surviving Corporation in conformity with the pre-merger rights and obligations of the members of the Constituent Corporations.
 - i) The obligation to return equity to a Member when the Member's Residential Unit is sold to a new Member shall be paid only under Article XII, Section 9 of Club's pre-merger By-Laws, which provision remains in force as Article 7.12 of the Amended and Restated Bylaws of Association.
 - ii) Reserve funds of the Association in existence on the Effective Date of the merger shall not be used for the ownership and operation of Recreational Facilities, but may only be used for the purposes for which they were originally created.
- n. Immediately prior to the Effective Date, the Board of Directors of the Association consists of five (5) Directors and the Board of Directors of the Club consists of five (5) Directors. The membership of both Boards of Directors is identical. Subsequent to this merger, the existing Board

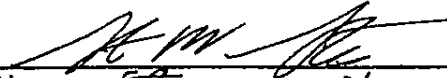
- a. At the first meeting of the Surviving Corporation Board of Directors after the Effective Date, the Surviving Corporation Board shall adopt the Rules and Regulations of the Club ("Rules and Regulations") as additional Rules and Regulations of Association.
 - p. The Officers of the Surviving Corporation shall be determined by its Board of Directors at the first meeting of Directors after the Effective Date.
4. The effectiveness of this Plan of Merger shall be conditioned upon the occurrence of each and every of the following:
 - a. For the Association, approval by greater than two-thirds (2/3) of all the members of the Association of; (i) this Plan of Merger; (ii) the Articles of Merger; (iii) the Amended and Restated Articles; (iv) the Amended and Restated Bylaws; and (v) the Amended and Restated Declaration; and
 - b. For the Club, approval by greater than a majority of the total number of votes eligible to be cast by members of the Club at a meeting at which a quorum is present approving this Plan of Merger.
5. Upon approval as provided in paragraph 4 (a) and (b) above, the Articles of Merger and the Amendments to Articles shall forthwith be filed with the Secretary of State, State of Florida.
6. Upon approval as provided in paragraph 4 (a) and (b) above, the Plan of Merger, Articles of Merger, Amended and Restated Declaration, Amended and Restated Articles, and Amended and Restated Bylaws shall be filed in the Public Records of Monroe County, Florida.
7. The Board of Directors of Association and the Board of Directors of Club may not abandon the merger after approval has been provided as per paragraphs 4 (a) and (b) above.
8. Each Constituent Corporation has disclosed to the other Constituent Corporation its financial statements, balance sheets, tax returns, and schedule of assets, all of the foregoing for the preceding five (5) years and prepared according to generally accepted accounting principles. Each Constituent Corporation has disclosed to the other Constituent Corporation its membership roster, schedule of all contracts and other obligations and benefits to which it is a party.

roster, schedule of all contracts and other obligations and benefits to which it is a party.

9. The Plan of Merger and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Florida. Venue for all proceedings hereunder shall be in Monroe County, Florida.
10. This Plan of Merger cannot be altered or amended except pursuant to an instrument in writing signed on behalf of both Constituent Corporations, and approved by the members of the Constituent Corporations as provided in paragraphs 4 (a) and (b) above.
11. In order to facilitate the filing and recording of the documents described in this Plan of Merger, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date and year first above written.

**MARINER'S CLUB HOMEOWNERS ASSOCIATION,
INC.**

By: 
Print Name: Steven W. Stearns
Title: President

MARINER'S CLUB, INC.

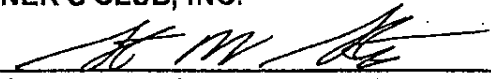
By: 
Print Name: Steven W. Stearns
Title: President

EXHIBIT "A"
ARTICLES OF MERGER

(Pursuant to Sections 617.1105, and 607.1109, Fla. Stat.)

1. The undersigned corporation, **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.**, a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of Florida, together with **MARINER'S CLUB KEY LARGO, INC.**, a for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of Florida (hereinafter collectively referred to as the "Constituent Corporations") have adopted a Plan of Merger.
2. Pursuant to Sections 617.1105, Fla. Stat. and 607.1109, Fla. Stat., attached hereto and made a part hereof is the Plan of Merger with an Amendment to the Articles of Incorporation of the Surviving Corporation appended as Exhibit "B" thereto (the "Amendment").
3. The Surviving Corporation under the Plan of Merger is **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.**, a not-for-profit corporation.
4. The Plan of Merger and Amendment were adopted by the Board of Directors of **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.** at a meeting held on November 12, 2015, pursuant to Section 617.1103, and Chapter 720., Fla. Stat., and were adopted by the Members of **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.** at a meeting held on December 12, 2015, by a sufficient number of votes cast for approval pursuant to the governing documents of said corporation.
5. The Plan of Merger was adopted by the Board of Directors of **MARINER'S CLUB KEY LARGO, INC.** at a meeting held on November 12, 2015, pursuant to Section 607.1103, Fla. Stat., and was adopted by the Members of **MARINER'S CLUB, INC.** at a meeting held on December 12, 2015, by a sufficient number of votes cast for approval pursuant to the governing documents of said corporation.
6. The Effective Date of the merger of the Constituent Corporations shall be the date of filing of the Articles of Merger with the Department of State.

Dated this 15 day of February, 2016.

MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.

By: _____

Print Name: Steven W. Stearns

Title: President

EXHIBIT B

Amended and Restated Articles of Incorporation of Mariner's Club Homeowners Association, Inc.

(A not-for-profit corporation)

Pursuant to Section 617.1105 of the Florida Not For Profit Corporation Act, Mariner's Club Key Largo, Inc. ("Club"), a Florida corporation, was merged with and into Mariner's Club Homeowners Association, Inc. ("Association"), a Florida not for profit corporation, pursuant to a Plan of Merger, dated December 20, 2015 ("Plan of Merger"). As part of the Plan of Merger, the requisite number of members and Board of Directors of each of the Club and the Association approved the following Amended and Restated Articles of Incorporation ("Articles"), amending and restating in their entirety the prior Articles of Incorporation of Mariner's Club Homeowners Association, Inc.

ARTICLE I NAME

The name of the corporation shall be Mariner's Club Homeowners Association, Inc., hereinafter referred to as the "Association," and its duration shall be perpetual.

ARTICLE II PURPOSE

The purpose for which the Association is organized is to engage as a non-profit organization in protecting the value of the property of the Members of the Association and of the Association, to exercise all the powers and privileges and to perform all of the duties and obligations of the Association as defined and set forth in that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mariner's Club and all amendments thereto (the "Declaration"), including the establishment and enforcement of payment of charges and Assessments contained therein, and to engage in such other lawful activities as may be to the mutual benefit of the Members and their Property. All terms used but not otherwise defined in these Articles shall have the same meaning given to them in the Declaration.

ARTICLE III POWERS

The powers of the Association shall include and be governed by the following provisions:

3.1 Common Law and Statutory Powers. The Association shall have all of the

common law and statutory powers of a not-for-profit corporation which are not in conflict with the terms of these Articles and the Declaration, and all of the powers of a homeowner's association pursuant to the HOA Act, Chapter 720, Fla. Stat., as such may be amended or renumbered from time to time.

3.2 Necessary Powers. The Association shall have all of the powers reasonably necessary to implement its purpose, including, but not limited to, the following:

A. To operate and manage the Property, including the Common Areas and the Recreational Facilities, in accordance with the purpose and intent contained in the Homeowner Documents;

B. To make and collect Assessments against Members to defray the Common Expenses and other expenses of the Association;

C. To use the proceeds of Assessments in the exercise of its powers and duties;

D. To maintain, repair, replace and operate the Common Areas;

E. To reconstruct improvements upon the Property after casualty and to further improve the Property;

F. To make and amend the Bylaws of the Association and the Rules and Regulations respecting the use of the Property;

G. To pay all taxes and other assessments which are liens against the Common Areas;

H. To enforce by legal means the provisions of the Declaration, these Articles, the Bylaws and the Rules and Regulations for the use of the Property;

I. To provide for management and maintenance and to authorize a management entity to assist the Association in carrying out its powers and duties by performing such functions, among others, as the collection of Assessments, preparation of records, enforcement of Rules and Regulations and maintenance of the Common Areas and Recreational Facilities. The Association shall, however, retain at all times the powers and duties granted it by common law, Florida Statutes and local ordinances including, but not limited to, the making of Assessments, the promulgation of rules, and the execution of contracts on behalf of the Association;

J. To possess, enjoy and exercise all powers necessary to implement, enforce, and carry into effect the powers above described, including the power to acquire, hold, convey, lease and deal in real and personal property, including Association Property, the Common Areas and the Recreational Facilities;

K. To operate, maintain and manage the Water Management System in a manner consistent with the applicable permit requirements and applicable water management rules and regulations;

L. To levy and collect adequate Assessments against Members for the costs of maintenance and operation of the Water Management System.

3.3 Funds and Title to Properties. All funds and title to all properties acquired by the Association and the proceeds thereof shall be held only for the benefit of the Members in accordance with the provisions of the Declaration. No part of the income, if any, of the Association shall be distributed to the Members, Directors, or Officers of the Association.

3.4 Limitations. The powers of the Association shall be subject to and be exercised in accordance with the provisions of the Declaration.

ARTICLE IV MEMBERSHIP AND VOTING

Qualification for, and admission to, membership in the Association, and the voting rights of the Members In the Association, shall be as provided in and regulated by the Declaration and the Bylaws of the Association.

ARTICLE V BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than nine (9) Directors, as may be determined pursuant to the Bylaws. The Directors shall be elected by the Members of the Association at the annual meeting.

ARTICLE VI OFFICERS

Officers shall be elected by the Board of Directors at the annual organizational meeting of the Directors, as provided in the Bylaws.

ARTICLE VII

INDEMNIFICATION OF OFFICERS, DIRECTORS AND COMMITTEE MEMBERS

The Association hereby indemnifies any Director, Officer or Association committee member made a party to or threatened to be made a party to any threatened, pending or completed action, suit or proceeding:

A. whether civil, criminal, administrative or investigative, (other than one by or in the right of the Association to procure a judgment in its favor), brought to impose a liability or penalty on such person for an act alleged to have been committed by such person in his capacity as Director, Officer or committee member, or in his capacity as Director, Officer, employee or agent of any corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action, suit or proceeding or any appeal therein, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association, and in criminal actions or proceedings, without reasonable ground for belief that such action was unlawful. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not in itself create a presumption that any such Director, Officer, or committee member did not act in good faith and in the reasonable belief that such action was in the best interests of the Association or that he had reasonable grounds for belief that such action was unlawful; and

B. by or in the right of the Association to procure a judgment in its favor by reason of his being or having been a Director, Officer or committee member for the Association or by reason of his being or having been a Director, Officer, employee or agent of any corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such person acted in good faith and in the reasonable belief that such action was in the best interests of the Association. Such person shall not be entitled to indemnification in relation to matters as to which such person has been adjudged to have been guilty of gross negligence or willful misconduct in the performance of his duty to the Association unless and only to the extent that the court, administrative agency, or investigative body before which such action, suit or proceeding is held shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such tribunal shall deem proper.

The Board of Directors shall determine whether amounts for which a Director, Officer or committee member seeks indemnification were properly incurred and whether such Director or Officer acted in good faith and in a manner he reasonably believed to be in the best interests of the Association, and whether, with respect to any criminal action or proceeding, he had no reasonable ground for belief that such action was unlawful.

Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding.

The foregoing rights of indemnification shall not be deemed to limit in any way the powers of the Association to indemnify under applicable law.

ARTICLE VIII INCORPORATOR

The name and address of the original incorporator of the Association is:

Name	Address
Chase Wolf	Pegasus Development Company 1969 S.W. 17th Street Boca Raton, FL 33486

ARTICLE IX BYLAWS

The Bylaws of the Association may be adopted, amended, altered, restated or rescinded as provided therein; provided, however, that at no time shall the Bylaws conflict with these Articles of Incorporation; and provided further that no amendment, alteration or rescission may be made which adversely impairs the security of any mortgagee of record as to any Residential Unit or other portion of the Property without the express, prior written consent of the mortgagee so affected. Any attempt to amend, alter or rescind contrary to these prohibitions shall be of no force or effect.

ARTICLE X AMENDMENTS

These Articles of Incorporation of the Association may be amended, altered or rescinded by the affirmative vote of Directors representing two thirds (2/3) of the total votes of the Board; provided, however, that no such amendments shall conflict with the terms of the Declaration; and provided further that no amendment, alteration or rescission may be made which adversely impairs the rights or privileges of any Institutional Mortgagee, without the express, prior written consent of the Institutional Mortgagee so affected. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

ARTICLE XI
TRANSACTIONS IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED

No contract or transaction between the Association and one (1) or more of its Members, Directors or Officers, or between the Association and any other entity in which any of the Association's Members, Directors or Officers has any interest shall be invalid, void or voidable solely for this reason, or solely because such interested person is present at or participates in the meeting of the Board or committee thereof which authorized the contract or transaction, or solely the votes of such interested person(s) are counted for such purpose. No Member, Director or Officer of the Association shall incur liability by reason of the fact that such Member, Director or Officer is or may be interested in any such contract or transaction.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction.

ARTICLE XII
DISSOLUTION OF THE ASSOCIATION

Upon termination, dissolution or final liquidation of the Association, all of its assets remaining after provision for creditors and payment of all cost and expenses of such dissolution shall be distributed in the following manner

A. Common Areas designated as Roads shall be dedicated to the appropriate local government agency.

B. The Water Management System owned by the Association at dissolution, termination or final liquidation shall, prior to such dissolution, termination or final liquidation, be conveyed to and accepted by an entity which complies with Section 40C-42.027 (Florida Administrative Code). Upon such conveyance, said entity would provide for the continued operation and maintenance of the Water Management System.

C. Remaining assets shall be distributed among the Members as tenants in common, each Member's share of the assets to be determined in accordance with its voting rights.

The Association may be dissolved upon a resolution to that effect being recommended by not less than three-fourths (3/4) of the Board of Directors, and approved by at least 67% of the eligible voting rights of the Members.

**ARTICLE XIII
REGISTERED AGENT AND REGISTERED OFFICE**

The name of the initial registered agent shall be CHASE WOLF and the street address of the registered office of the Association shall be 97501 Overseas Highway, Key Largo, FL 33037. The Association shall have the right to designate subsequent registered agents without amending these Articles of Incorporation.

**ARTICLE XIV
ADDRESS**

The principal place of business or mailing address of the Association shall be:

97501 Overseas Highway, Box 1
Key Largo, FL 33037

**ARTICLE XV
SEVERABILITY**

If any provision of these Articles of Incorporation is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of these Articles of Incorporation shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of these Articles of Incorporation may be construed in two or more ways, one of which would render the provision invalid or otherwise avoidable or unenforceable, and the other of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

**ARTICLE XVI
CONFLICT**

In the event of conflict between the provisions of these Articles and the Declaration, the Bylaws or Florida law, the provision of Florida law, the Declaration, these Articles, and the Bylaws shall prevail (in that order).

By: Jo M. Kue

Its President

STATE OF FLORIDA)
COUNTY OF)SS.

The foregoing Amended and Restated Articles of Incorporation was acknowledged before me this 15 day of February, 2016, by Steve Denmark, who is personally known to me/provided identification.



Viriala Alvarado
Commission # FF164884
Expires: OCT 01, 2018
BONDED THRU
1ST FLORIDA NOTARY, LLC

NOTARY PUBLIC
Print Name: Virgilia Alvarado
Commission Exp: Oct 01, 2018
Commission No.: FF161884

EXHIBIT C

**Amended and Restated Bylaws
Of
Mariner's Club Homeowners Association, Inc.**

(A Not-for-Profit Corporation Under the Laws of the State of Florida)

Article I
Name, Purpose and Definitions

1.1 Name. The name of the Association shall be MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC. ("Association").

1.2 Principal Office. The initial principal office of the Association is 97501 Overseas Highway, Key Largo, Florida 33037.

1.3 Seal. The seal of the Association shall bear the name of the Association, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.

1.4 Purpose. The purpose of the Association is to: control and regulate the Mariner's Club community, including the Common Areas and Recreational Facilities, as defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mariner's Club ("Declaration"); promote, assist and provide adequate and proper maintenance of the Property for the benefit of all residents and members; provide and promote recreational activity within the Property through the acquisition, ownership and management of facilities for the recreation, pleasure and benefit of the Members (whether by fee simple ownership, leasehold or other possessory use interest); enhance the quality of life and property values within the community through means and methods as the Association may deem in the best interest of its Members; exercise all powers and discharge all responsibilities granted to the Association as a corporation and as a homeowners' association under the laws of the State of Florida, its Articles of Incorporation ("Articles"), Declaration and these Bylaws; acquire, hold and convey, and otherwise deal with, real and/or personal property in the Association's capacity as a homeowners' association; and otherwise engage in such additional lawful activities for the benefit, use, convenience and enjoyment of its Members as it may deem proper and as contemplated by the Declaration.

1.5 HOA Act. The Association shall be governed Chapter 720, Fla. Stat. (the "HOA Act") as the same may be amended from time to time.

1.6 Definitions. All capitalized terms used and not otherwise defined in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article II

The Association: Membership Meetings, Quorum, Voting, Proxies

2.1 Membership. The Association shall have one (1) class of membership ("Membership"). A person or entity shall automatically become a Member upon acquisition of fee simple title to any Residential Unit, by filing a deed in the Public Records of Monroe County. Membership shall continue until such time as the Member transfers or conveys his interest of record or the interest is transferred or conveyed by operation of law, at which time Membership, with respect to the Residential Unit conveyed, shall automatically be conferred upon the transferee, provided, however that the transferee must pay the Membership Contribution. Membership shall be appurtenant to, and may not be separated from, ownership of property subject to the Declaration. No person or entity holding an interest of any type or nature whatsoever in a Residential Unit only as security for the performance of an obligation, shall be a member of the Association.

2.2 Place of Meetings. Meetings of the Association shall be held in Monroe County or at such suitable place convenient to the Members as may be designated by the Board, either within the Property or as convenient thereto as possible and practical.

2.3 Annual Meetings. Annual meetings of the Association shall be held at least once per year on a date and at a time set by the Board.

2.4 Special Meetings. The President may call special meetings in his or her discretion, but shall be required to do so: (i) if so directed by resolution of a majority of a quorum of the Board; or (ii) upon receipt of a petition signed by Members representing at least ten percent (10%) of the total votes of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose(s) therefor. No business shall be transacted at a special meeting except as stated in the notice.

2.5 Notice of Meetings. Written or printed notice stating the place, day and hour of any membership meeting of the Association shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than fourteen (14) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the Officers or persons calling the meeting. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the address as it appears on the records of the Association, with postage thereon prepaid. Notice of meetings of the Members may be provided by electronic transmission when a Member has consented in writing to receive notice by electronic transmission.

2.6 Waiver of Notice. Waiver of notice of a meeting shall be deemed the

equivalent of proper notice. Members may, in writing, waive notice of any meeting either before or after such meeting. Attendance at a meeting by a Member shall be deemed a waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted unless objection to the calling or convening of the meeting for which proper notice was not given is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the voting interests who are represented at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than ninety (90) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any such action taken is approved by at least a majority of the voting interests required to constitute a quorum.

2.8 Voting. Matters on which Members are entitled to vote shall be determined by a majority of votes cast. Each Member shall be entitled to one (1) equal vote for each Residential Unit owned by such Member, as to matters on which the Members are entitled to vote. When more than one person or entity holds the title to a Residential Unit, such persons or entities shall together constitute one Member and the vote attributable to such Residential Unit shall be exercised as they, among themselves, determine, with notice of such determination in writing to the Association Secretary; provided, however, that in no event shall more than one (1) vote be cast with respect to each Residential Unit. Any Member that is an entity other than a natural person shall likewise file with the Secretary a written notice designating the name of an individual who shall be authorized to represent the Member's vote for that Residential Unit, which notice shall be valid until replaced or rescinded by the Member.

2.9 Proxies. Members may vote by proxy. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, dated, state the date, time and place of the meeting for which it is given, be signed by the person authorized to cast the vote for the Residential Unit and be filed with the Secretary before the commencement of the applicable meeting,

or before the time the meeting is adjourned.

2.10 Quorum. Except as otherwise provided in these Bylaws or in the Declaration, the presence in person of Members or their proxy-holders representing thirty percent (30%) of the total eligible votes of the Association shall constitute a quorum at all meetings of the Association.

2.11 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

2.12 Action Without Meetings. Any action which may be taken at any meeting of the Members may be taken without a meeting if the action is evidenced by written consent documents sufficient to constitute the minimum number of Members that would be required to approve such action if the entire Membership were present and voting at a duly called meeting, so long as such written consent procedure complies with the provisions of Section 617.0701, Fla. Stat.

Article III

Board of Directors: Number, Powers, Meetings

3.1 Composition and Selection.

3.1.1 Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors (the "Board") on which each Director shall have one (1) vote. The Directors shall be Members or designated representatives of a Member that is not a natural person. If title to a Residential Unit is held by more than one person, the individual designated in writing to the Secretary of the Association as the representative of such multiple Owners, or of an Owner that is not a natural person, shall be eligible to serve as a Director.

3.1.2 Number of Directors. The number of Directors in the Association shall be five (5), but may be changed to any odd number between and including three (3) and nine (9) if such change is approved by at least seventy-five (75%) percent of the total Directors, voting at a duly noticed Board Meeting.

3.1.3 Nomination of Directors. Directors shall be elected by written ballot. Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivered in regularly published newsletters, to each Member entitled to vote, a first notice of the date of the Annual Meeting and election. Any Member or other eligible person desiring to be a candidate for the Board of Directors must give written notice to the Association not less than forty (40) days before a scheduled election. Not less than fourteen (14) days before the scheduled Annual Meeting, the Association shall then mail

or deliver a second notice of the election to all Members entitled to vote therein, together with a ballot which shall list all eligible candidates who timely submitted their names. Nominations shall not be permitted from the floor at the Annual Meeting. All candidates shall have reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

3.1.4 Election and Term of Office. Commencing with the August 2009 election, the Board of Directors shall be elected to serve staggered terms as follows: The two (2) Directors who receive the highest number of votes shall be elected to serve a three (3) year term. The remaining three (3) Directors receiving the next highest number of votes shall be elected to serve two (2) year terms. Thereafter, at each Annual Meeting where a Director's term expires, the expiring terms shall be filled by Directors who are elected to serve two (2) year terms.

Elections shall be decided by a totality of ballots cast. There shall be no quorum requirement; however, at least twenty (20%) percent of the eligible votes must be cast in order to have a valid election of members of the Board of Directors. No Member shall permit any other person to vote his or her ballot, and any such ballot improperly cast shall be deemed invalid. The regular election shall occur on the date of the Annual Meeting. There shall be no cumulative voting. The Directors elected by the Members shall hold office until their respective successors have been elected. An election and ballot are not required unless more candidates submit notices of intent to run or are nominated than vacancies exist on the Board. In the event there are the same or fewer candidates as there are open positions on the Board, those candidates shall be seated as Directors on the scheduled date of the Annual Meeting, whether or not such Meeting actually takes place.

3.1.5 Removal of Directors and Vacancies. Any Director elected by the Members may be removed, with or without cause, by the vote of a majority of the Members entitled to cast votes for the election of such Director. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected to fill the vacancy for the remainder of the term of such Director.

Any Director elected by the Membership who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any Assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum has been achieved, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term of such director. In the event of the death, disability or resignation of a Director, the Board may appoint a successor, who shall serve for the remainder of the term of the Director who vacated the position.

3.2 Meetings.

3.2.1 Organizational Meetings. The first meeting of the Board following each annual meeting of the Membership, which meeting shall be for the purpose of electing Officers and for any other legitimate Association purpose as determined by the Board, shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

3.2.2 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of the time and place of the meeting shall be given not less than forty-eight (48) hours prior to the meeting, or fourteen (14) days prior to the meeting where otherwise required by the HOA Act or the governing documents; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting. Notice of regular meetings of the Board may be provided by electronic transmission when a Member has consented in writing to receive notice by electronic transmission.

3.2.3 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by any three (3) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) personal delivery; or (b) written notice by first class mail, postage prepaid; or email. All such notices shall be sent to the Director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least forty-eight (48) hours before the time set for the meeting. Notices given by personal delivery or email shall be delivered at least forty-eight (48) hours before the time set for the meeting. Notice of special meetings of the Board shall be given to the Members not less than forty-eight (48) hours prior to the meeting, or fourteen (14) days prior to the meeting where otherwise required by the HOA Act or the governing documents. Notice of special meetings of the Board may be provided by electronic transmission when a Member has consented in writing to receive notice by electronic transmission.

3.2.4 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.2.5 Quorum of Board of Directors. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present in person at a meeting at which a quorum is present shall constitute the decision of the Board, unless a greater vote is required by the Homeowners Documents or the HOA Act. Directors may not vote by proxy or by secret ballot, except that secret ballots may be used in the election of Officers. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.2.6 Compensation. No Director shall receive any salary or any other compensation from the Association for acting as such; provided, however, that any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

3.2.7 Conduct of Meeting: Voting. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording therein all resolutions adopted by the Board and all transactions and proceedings occurring at such meetings, including the vote or abstention from voting on each matter voted upon for each Director present at the meeting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballot may be used in the election of Officers.

3.2.8 Action Without Meetings. Any action which may be taken by the Board of Directors may be taken by unanimous written consent, consistent with the provisions of Section 617.0821, Fla. Stat.

3.2.9 Meetings Open to Members. All meetings of the Board shall 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, or any other meetings not required to be open to the Members pursuant to the HOA Act; and notices of meetings shall be posted in a conspicuous place on the Property at least forty-eight (48) hours in advance, except in an emergency. In the alternative, if notice is not posted in a conspicuous place on the Property, notice must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. Notice of any meeting at which Assessments against Residential Unit(s) are to be established shall specifically contain a statement that Assessments are to be considered and a statement of the nature of such Assessments. This section shall also apply to meetings of any committee or similar body when a final decision regarding expenditures of Association funds shall be made therein and to meetings of any committee or other body vested with the power to approve or disapprove of architectural decisions.

3.3 Powers and Duties.

3.3.1 Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not reserved exclusively to the Membership generally by the Declaration, Articles, or these Bylaws.

In addition to the duties imposed by the Declaration, Articles, by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

- (a) preparing and adopting an annual budget at least thirty (30) days prior to the end of the Association's fiscal year setting forth the Common Expenses or other expenses of the Association;
- (b) making both Regular and Special Assessments to pay the Common Expenses or other expenses of the Association, establishing the means and methods of collecting such Assessments, and establishing a period for installment payments of Assessments;
- (c) collecting the Assessments and depositing the proceeds thereof in a federally insured depository which it shall approve;
- (d) expending funds for the purposes of the Association; making contracts, borrowing money and incurring indebtedness on behalf of the Association; and, causing promissory notes, bonds, mortgages, assignment of Assessments and lien rights or other evidences of indebtedness to be executed and issued;
- (e) providing for the operation, care, upkeep and maintenance of all of the Common Areas and Recreational Facilities;
- (f) establishing committees;
- (g) filling vacancies on the Board of Directors due to death, resignation, inability to perform duties, or otherwise, for the balance of the term of the Director who died, resigned or is unable to perform;
- (h) designating, hiring, and dismissing any manager or any other personnel necessary for the operation of the Association, and the maintenance, operation, repair and replacement of the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such

personnel in the performance of their duties;

(i) making and amending Rules and Regulations governing the property and the Residential Units, within;

(j) making and amending Rules and Regulations governing the Recreational Facilities, including their use by Members and their guests;

(k) establishing, changing or eliminating categories of use in the Recreational Facilities and setting the fees required for Recreational Facility use, including the amount of any Membership Contribution, as provided in Section 720.308;

(l) exchanging rights to use the Recreational Facilities with members of other facilities and clubs;

(m) opening of bank accounts on behalf of the Association and designating the signatories required;

(n) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas in accordance with the other provisions of the Declaration and these Bylaws;

(o) enforcing by legal means the provisions of the Articles, the Declaration, these Bylaws, and any Rules and Regulations, and bringing and defending any proceedings which may be instituted on behalf of or against the Association;

(p) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(q) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(r) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(s) making available, at a reasonable copy charge to the extent permitted by law, to any prospective purchaser of a Residential Unit, any Owner of a Residential Unit, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Residential Unit, current copies of the Declaration, the Articles, these Bylaws, Rules and Regulations, and all other books, records, and financial statements of the Association;

- (t) granting licenses to utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Property;
- (u) determining the interpretation or construction of these Bylaws, or any parts hereof, which may be in conflict or of doubtful meaning, which determination shall be final and conclusive, so long as it is consistent with applicable law; and
- (v) doing any and all such other things as are permitted to be done by not for profit corporations pursuant to the laws of the State of Florida, the Declaration, the Articles and these Bylaws.

3.3.2 Manager. The Board may employ for the Association a professional management agent or agents (the "Manager"), at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to the Manager, subject to the Board's supervision, all of the powers granted to the Board by these Bylaws.

3.3.3 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no Manager shall solicit, offer to accept, or accept any good or service of value from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finders fees, service fees, prizes, gifts, or otherwise; and anything of value so received shall be the property of the Association. Nothing herein shall prohibit the Manager from earning commissions for services performed by the Manager in leasing Residential Units on behalf of the Owners of such Units, but all such actions shall be in compliance with applicable laws, ordinances and regulations;
- (e) any financial or other interest which the Manager may have in any firm providing goods or services to the Association shall be disclosed

promptly to the Board; and

(f) annual financial reports shall be prepared for the Association containing:

(i) financial statements presented in conformity with generally accepted accounting principles; or

(ii) a financial report of actual receipts and expenditures on a cash basis and showing:

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

(2) a balance sheet as of the last day of the preceding period, which shows the beginning and ending cash balance of the Association.

The annual financial report shall be prepared within ninety (90) days after the close of the fiscal year and said report shall be mailed to each Member or each Member shall receive notice that the report is available upon request at no charge to the Member, within the time limits set forth below for inspection of Association records and books. Such annual report shall be prepared on an audited or reviewed basis, as determined by the Board, by an independent certified public accountant.

(iii) A compilation, review or audit prepared by a certified public accountant shall be prepared if such is required by the HOA Act and is not waived as allowed by such Act.

3.4 Borrowing. The Board shall have the power to borrow money for the purpose of maintenance, repair or restoration of Common Areas and Recreational Facilities without the approval of the Membership. The Board shall also have the power to borrow money for other purposes, provided the Board shall obtain Membership approval in the event that the proposed borrowing is for the purpose of modifying, improving or adding Common Areas or Recreational Facilities and the total amount of such borrowing exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for the fiscal year in which such borrowing occurs. Notwithstanding anything to the contrary contained in the Declaration, these Bylaws or the Articles, no mortgage lien shall be placed on any portion of the Common Areas without a unanimous vote of the Board of Directors.

3.5 Rights of the Association. In accordance with the Articles and the Declaration, the Association shall have the right to contract with any person for the

performance of various duties and functions with respect to the Common Areas and Recreational Facilities. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other owners or residents associations, both within and without the Property. Such agreements shall require the consent of at least a majority of the Directors.

3.6 Enforcement. The Board shall have the power to impose reasonable fines, not to exceed the maximum amount permitted by law per violation, and to suspend a Member's right to use the Common Areas or Recreational Facilities for violation of any duty imposed under the Homeowners Documents. Any such fine shall constitute a lien upon the Residential Unit(s) of the violating Owner where allowed by law, and the total amount of such fines, in the aggregate for a single violation, may exceed One Thousand (\$1,000.00) Dollars. In the event that any occupant of a Residential Unit other than an Owner violates the Homeowners Documents and a fine is imposed, if the fine is not paid within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Homeowners Documents shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction, suspension or fine hereunder, except for any sanction imposed because of the violator's failure to pay Assessments or other charges when due, the Board or its delegate shall serve the alleged violator with written notice stating (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) fourteen (14) days' notice that the violation and fine will be presented to a committee designated by the Board; and (iv) that the proposed sanction shall not be imposed as contained in the notice unless approved by the committee.

(b) Hearing. A hearing shall be held before a Grievance Committee of at least three members, appointed by the Board, who are not Officers, Directors, or employees of the Association, or the spouse, child, parent or sibling of an Officer, Director or employee. If the committee does not approve the proposed fine or sanction, it may not be imposed. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fourteen (14) day notice period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Homeowners Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking and traffic Rules and Regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above or by an action of eviction against any occupant of a Unit other than the Owner. In any such action, to the maximum extent permissible, the Owner and occupant responsible for the violation of which abatement is sought shall pay all costs, including attorneys' fees, paralegal and law clerk fees and costs actually incurred.

(d) **Suspension.** Any suspension of the right to use Common Areas or Recreational Facilities may not impair an Owner or Owner's tenant right to vehicular and pedestrian ingress to and egress from his Unit, including, without limitation, the right to park.

(e) **Non-Payment of Assessments.** Notwithstanding the foregoing, the Board shall be authorized to levy fines for non-payment of annual, special or individual assessments or Recreational Facilities dues or charges, and for any interest or costs of collection related thereto, in accordance with a schedule of such fines to be provided to the Owners, and to suspend a Member's, or the Members' tenants', guests' or invitees', rights to use the Common Areas or Recreational Facilities for any period during which any Assessment or other monetary obligation remains unpaid. In addition, the Board may suspend the voting rights of a Member for the non-payment of any monetary obligation that is delinquent for a period in excess of ninety (90) days from the date in which such obligation became due. Any such suspension of voting rights shall end upon the payment in full of all amounts and Assessments then due by such Owner to the Association.

(f) **Enforcement Costs.** The Board shall be entitled to collect from the offending party debt collection agency fees, reasonable attorneys' fees (including appellate attorney's fees) and other fees and costs of any action or proceeding under this Section to enforce any provision of the Homeowners Documents.

Article IV **Officers**

4.1 **Officers.** The Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President shall be a member of the Board. The Board of Directors may appoint such other Officers, including one or more Vice

Presidents, Assistant Secretaries, or Assistant Treasurers, as it shall deem desirable, such Officers to have the authority and perform the duties prescribed from time to time by the Board. Any two (2) or more offices may be held by the same person, except for the offices of President and Secretary.

4.2 Election. Term of Office, and Vacancies. The Officers of the Association shall be elected annually by the Board at the organizational meeting of the Board following each annual meeting of the Members, as set forth herein. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

4.3 Removal. Any Officer may be removed by a majority of the total membership of the Board whenever in its judgment the best interests of the Association shall be served thereby.

4.4 Powers and Duties. The Officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board. Specifically, the powers of the Officers shall include, but not be limited to, the following:

4.4.1 President. The President shall preside at all meetings of the Members and the Board of Directors. The President may call special meetings of the Board of Directors, shall be an ex-officio member of all committees and is empowered to execute checks and all other papers and documents requiring execution in the name of the Club.

4.4.2 Vice President. In the absence or disability of the President, the Vice President shall perform and carry out all duties and responsibilities of the President.

4.4.3 Secretary. The Secretary shall keep or cause to be kept records and minutes of all meetings of the Board of Directors and the membership, and shall be responsible for giving all required notices of such meetings. All membership records shall be kept under the Secretary's supervision.

4.4.4 Treasurer. The Treasurer shall cause to be collected, held and disbursed, under the direction of the Board of Directors, all monies of the Association, and it shall be the Treasurer's duty to collect or cause to be collected monies due to the Association from the membership, and all amounts due from others. The Treasurer shall keep or cause to be kept regular books of accounts and all financial records of the Association, and shall prepare the budget and financial statements, when and in the form requested by the Board of Directors. The Treasurer shall deposit or cause to be deposited all monies of the Club in an account or accounts in the Club's name, in the bank or banks designated by the Board of Directors.

4.5 Resignation. Any Officer may resign at any time by giving written notice to

the Board, the President or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Once received in writing, such resignation may not be rescinded.

4.6 Agreements: Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) Officers, or, in the alternative, by such other person or persons as may be designated by resolution of the Board.

Article V

Committees

5.1 General. The Board may, at any time and from time to time, create standing or ad hoc Committees and designate, remove and replace the chairperson and members of each Committee. All members of all Committees must be Members of the Association. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Each Committee shall operate in accordance with the terms of the resolution of the Board appointing the Committee or with rules adopted by the Board.

5.2 Committee Meetings. The requirements of Section 3.2.9 above shall apply to all meetings of any Committee when a final decision will be made regarding the expenditure of Association funds and to meetings of any committee vested with the power to approve or disapprove architectural decisions with respect to a specific Residential Unit.

Article VI

Transactions in Which the Directors or Officers are Interested

No contract or transaction between the Association and one or more of its Members, Directors or Officers, or between the Association and any other entity in which any of the Officers, Directors or Members of the Association has any interest, shall be invalid, void or voidable solely for this reason, or solely because such interested person is present at or participates in meetings of the Board or any Committee thereof which authorized the contract or transaction, or solely because the votes of such interested person(s) are counted for such purpose. No Director, Officer or Member of the Association shall incur liability by reason of the fact that the Director, Officer or Member may be interested in any such contract or transaction.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a Committee which authorized the contract or transaction.

Article VII

Recreational Facilities

7.1 General. Among the facilities owned by the Association are certain Recreational Facilities formerly owned by Mariner's Club Key Largo, Inc., which facilities include, but shall not be limited to, a clubhouse, tennis court, mooring, boat slips and dry storage slots. The Board shall have the power to define which facilities, Property and Common Areas of the Association are to be part of the Recreational Facilities.

7.2 Membership Categories. The Association shall offer membership in the Recreational Facilities, which membership shall only be available to individuals and entities that own a Residential Unit in the Development. Each Residential Unit Owner in the Development is required, as a condition to purchasing a Residential Unit in the Development, to purchase and maintain a Recreational Facilities Membership. Only one Membership shall be required per Residential Unit, regardless of the number of Owners of that Residential Unit. In the event that the number of Residential Units in the Development is changed for any reason, the Board shall have the authority to change the number of Recreational Facilities Memberships, such that there are always the same number of Recreational Facilities Memberships as there are Residential Units in the Development.

7.3 Issuance of Memberships. The Board of Directors shall have sole authority to issue, cancel, suspend and transfer Recreational Facilities Memberships, and shall have membership certificates prepared and issued in form and content consistent with the provisions of the Articles of Incorporation and these Bylaws. Recreational Facilities Memberships are available only to purchasers of Residential Units in the Development. Each purchaser and/or owner of a Residential Unit must obtain and maintain a Recreational Facilities Membership. A maximum of one hundred eighteen (118) Recreational Facilities Memberships shall be active at any time, each one associated with a Residential Unit governed by the Association, unless such number is increased pursuant to 7.2, above.

7.4 Membership Contribution. In order to obtain the required Recreational Facilities Membership, each applicant for such membership must pay a Membership Contribution to the Association, which Membership Contribution shall be refundable pursuant to the terms of these Bylaws as they may be amended from time to time. All Membership Contributions may be assigned to and reserved in a special account if desired by the Board, which funds may be used to refund resigning Members' Membership Contributions where applicable, and may also be used for common expenses, the capital improvement of the Recreational Facilities, or as otherwise determined by the Board. The Membership Contribution shall be included with the Membership Application. The amount of the Membership Contribution shall be as determined by the Board from time to time.

7.5 Application. At least thirty (30) days prior to the purchase of a Residential Unit, an applicant must mail or deliver to the Membership Director (or such person as is designated by the Board) a fully completed and signed Membership Application and a check in U.S. funds for the Application Fee required by the Membership Application. After receiving the required materials, a determination shall be made whether the applicant has satisfied the relevant conditions of Recreational Facilities Membership. No owner of a Residential Lot shall be denied Recreational Facilities Membership unless such ownership is invalid pursuant to the Homeowners Documents.

7.6 Privileges. A Recreational Facilities Membership shall entitle the member to the use and enjoyment of the Recreational Facilities. Such membership shall not entitle the member to any dividends or other distributions of the Association's funds, in any manner. All use privileges are subject to the payment of the Membership Contribution and any applicable dues, charges or assessments, and such privileges may be suspended for non-payment.

7.7 Use by Family Members. Only one person, and his or her immediate family (including spouse and children by birth or adoption) may exercise the privileges of Recreational Facilities Membership at any time. In no event shall the Association become involved in disputes between separated or divorced spouses, or involving the heirs of deceased members, or in disputes over the ownership of Residential Units, or the ownership of Recreational Facilities Memberships. In the case of such disputes, the Association may (but shall not be required to) at any time in the discretion of the Board, suspend all privileges to use the Recreational Facilities of such members until such disputes are resolved by agreement or law and the Association receives satisfactory evidence of such resolution. All dues and charges must continue to be paid by the member, and failure to pay dues and charges may result in suspension of use privileges.

7.8 Guest Privileges. Recreational Facilities Members whose rights to use the Recreational Facilities have not been suspended shall be entitled to have guests use the Recreational Facilities in compliance with Recreational Facilities Rules as determined by the Board, and subject to any fees and charges levied by the Board for such use. The Recreational Facilities Member is responsible for all charges incurred by guests, and for the deportment of, and damages caused by, guests using the facilities. Guests may not, themselves, invite guests to use the Recreational Facilities.

7.9 Entity Memberships. If a Residential Unit is owned by an entity, whether a corporation, partnership, or other business structure, the Recreational Facilities Membership must also be owned by that entity. An entity owning a Recreational Facilities Membership shall designate in writing to the Association the name of an individual to be considered the "Beneficial Recreational Facilities Member," which Beneficial Recreational Facilities Member shall be entitled to use the Recreational Facilities as if he or she were the Recreational Facilities Member. The Entity Member shall continue to be obligated to the Association for all dues, fees and charges of Recreational Facilities use in the event such costs are not paid by the Beneficial Recreational Facilities Member, and shall be

responsible for any expenses due to damage caused by the use of the Recreational Facilities pursuant to such Entity Member's membership. An Entity Member may designate a new Beneficial Recreational Facilities Member no more than once every six (6) months.

7.10 Multiple Memberships. If a person or entity acquires two (2) or more Residential Units in the Development, the property owner must purchase a Recreational Facilities Membership for each Residential Unit. A person or entity that owns multiple Recreational Facilities Memberships shall be responsible for payment of dues with respect to each membership, and shall not be entitled to any special privileges due to ownership of multiple memberships, other than the ability to vote as a Member of the Association, consistent with the Homeowners Documents.

7.11 Boat Slips and Dry Docks. Among the Recreational Facilities are Boat Slips and Dry Docks, which Slips and Docks are Property of the Association. The Association shall have the right to lease such Slips and Docks to the Recreational Facilities Members or their guests, and shall recognize any leases that pre-exist the acquisition of such Slips and Docks by the Association.

Recreational Facilities Members may be allowed to lease Boat Slips or Dry Docks from the Association for up to ten (10) years at a time for a fixed rent. Rental fees shall be determined annually, on January 31st of each year by the Board of Directors. Lessees of Boat Slips or Dry Docks shall be responsible for the cost of any dockside utilities or services actually used. In addition, lessees of Dry Docks shall be responsible for payment of in/out fees, as set by the Board from time to time. All leases of Boat Slips and/or Dry Docks shall terminate upon the sale of the Member's Residential Unit, or upon any other termination or suspension of Recreational Facilities Membership Privileges, including suspension of rights to use the Common Areas or Recreational Facilities pursuant to these Bylaws and the HOA Act. All costs for which the Lessee is responsible, including the rental amount and all fees described herein, may be charged as an Assessment, collectible in the same manner as provided for collection of Assessments pursuant to the Declaration and the HOA Act.

The Board's decisions as to the allocation of Boat Slips and Dry Docks shall be final and non-appealable.

7.12 Transfer of Recreational Facilities Memberships--Sale. Recreational Facilities Membership may be sold or transferred only to the Association. A Recreational Facilities Member shall be required to sell his or her membership back to the Association in the event the member sells his/her/its Residential Unit. The Association shall repurchase the membership at the closing of the sale of the Residential Unit and shall resell the membership to the new purchaser of the Residential Unit. Upon receipt of all contributions, dues and fees required of the new Recreational Facilities Member, the outgoing member shall receive the amount of the Membership Contribution the member originally paid for the Recreational Facilities Membership, less any dues, assessments,

fees, charges, monetary amounts due, costs or damages owed to the Association, for any reason. All privileges to use the Recreational Facilities shall cease upon resale of the membership. No owner of a Residential Unit may resign their Recreational Facilities Membership. The selling Member is responsible for notifying the Association prior to the sale of the Residential Unit and for notifying the buyer of the requirement to acquire a Recreational Facilities Membership at the time of closing. The Board of Directors may establish rules, forms and procedures for the transfer of Recreational Facilities Memberships.

7.13 Transfer of Recreational Facilities Memberships—Death, Divorce or Separation. In the event of separation (legal or otherwise) of a married Recreational Facilities Member, assuming both spouses remain owners of the Residential Unit, both spouses shall continue to have privileges to use the Recreational Facilities, and ownership of the Recreational Facilities Membership shall remain unchanged unless otherwise provided by agreement of the parties or by court order.

In the event of the divorce of a Recreational Facilities Member, the membership shall belong to the spouse retaining ownership of the Residential Unit, unless the non-owner spouse is awarded occupancy of the Residential Unit, in which case such occupying spouse shall be considered a Beneficial Member of the Recreational Facilities and shall have all privileges of use, thereof.

Upon the death of a married Recreational Facilities Member, the surviving spouse shall be entitled to have the membership certificate transferred to him or her without payment of an additional Membership Contribution, and shall continue to have the same membership privileges as the deceased member.

If a deceased member is not survived by a spouse, then the legatee, heir or surviving joint tenant of the member's Residential Unit shall become the Recreational Facilities Member. The legatee, heir or surviving joint tenant shall make application for Recreational Facilities Membership within sixty (60) days after title to the Residential Unit is distributed to such person, or within sixty (60) days after the deceased member's death, in the event of a joint tenancy. An additional Membership Contribution, equal to the difference between the Membership Contribution paid for the membership and the Membership Contribution amount in effect on the date the Association receives notice of the member's death, shall be required if the legatee, heir or surviving joint tenant is not the spouse or child of the deceased member. In the case of a devise to a spouse or child of the deceased member, whether a child by birth or adoption, no additional Membership Contribution shall be required. The estate of the deceased member shall remain responsible for all fees and charges which may become due, until the transfer of the Recreational Facilities Membership is complete.

7.14 Payment of Dues Until Resale or Resignation. A Recreational Facilities Member must continue to pay dues until his/her/its membership is repurchased by the Association. Any amounts not paid at the time of repurchase may be deducted from any

refund of the Membership Contribution to be paid to the former member.

Article VIII **Miscellaneous**

8.1 Fiscal Year. The fiscal year of the Association shall begin on January 1st each year and end on December 31st each year, unless otherwise set by resolution of the Board.

8.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with applicable law and the Homeowners Documents.

8.3 Conflicts. If there are conflicts between the mandatory provisions of applicable law, the Articles, the Declaration, and these Bylaws, the provisions of applicable law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

8.4 Official Records. The Association shall maintain each of the following items, which items, when applicable, and in addition to any other documents required by the HOA Act, shall constitute the official records of the Association. Any conflict between this provision and the HOA Act shall be governed by the HOA Act:

- (a) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the Common Areas.
- (b) A copy of the Bylaws of the Association and of each amendment thereto.
- (c) A copy of the Articles of Incorporation of the Association and of each amendment thereto.
- (d) A copy of the Declaration of Covenants, Conditions and Restrictions and of each amendment thereto.
- (e) A copy of all Rules and Regulations of the Association.
- (f) The minutes of all meetings of the Board of Directors and of the Members, which minutes must be retained for at least 7 years.
- (g) A current roster of all Members and their mailing addresses and parcel identifications.
- (h) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least seven (7) years.

(i) A current copy of all contracts to which the association is a party , including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation or responsibility, Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of one (1) year.

(j) The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of seven (7) years. The financial and accounting records must include:

1. Accurate, itemized, and detailed records of all receipts and expenditures.
2. A current account and a periodic statement of the account for each Member, designating the name and current address of each Member who is obligated to pay Assessments, the due date and amount of each Assessment or other charge against the Member, the date and amount of each payment on the account, and the balance due.
3. All tax returns, financial statements, and financial reports of the Association.
4. Any other records that identify, measure, record, or communicate financial information.

8.5 Inspection of Official Records.

(a) Inspection by Members. The official records shall be maintained within the state and must be open to inspection and available for photocopying by Members or their authorized agents at reasonable times and places within ten (10) business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the Property. The Association may adopt reasonable Rules and Regulations governing the frequency, time, location, notice and means of inspections and may impose fees to cover the costs of providing copies of the official records.

(b) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make copies of relevant documents at the expense of the Association.

8.6 Minutes. Minutes of all of the meetings of the Members and of the Board of Directors must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each Director present at a Board meeting must be recorded in the minutes. If an audio recording of a meeting is made for purposes of transcribing minutes of the meeting (whether such recording is analog or digital) such recording may be discarded after transcription and shall not be considered an official record of the Association.

8.7 Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

- (a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Residential Unit of such Member, or
- (b) if to the Association, the Board of Directors, or the Manager, at the principal office of the Association or the Manager, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

8.8 Litigation. The Association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all Members concerning matters of common interest to the Members, including, but not limited to, the Property; roof or structural components of a building, or other improvements for which the Association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the Association is responsible; enforcing of the Governing Documents; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions.

8.9 Amendment. These Bylaws may be amended only by the affirmative vote of Directors representing two-thirds (2/3) of the total votes of the Board. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may impair the validity or priority of the lien of any Mortgage held by a Mortgagee or adversely impair the rights granted to that Mortgagee herein, without the prior written consent of such Mortgagee.

8.10 Statutory Requirements. These Bylaws and the powers and duties of the Association, the Board and the Members shall be subject to the mandatory provisions of Florida Law governing or regulating homeowners associations, provided, however that these Bylaws shall prevail when any such law or statute permits the Bylaws of an

association to supersede the statutory provision.

8.11 Severability. If any provision of these Bylaws is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of these Bylaws shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of these Bylaws may be construed in two or more ways/one of which would render the provision invalid or otherwise avoidable or unenforceable, and the other of which would render the provision and such provision shall have the meaning which renders it valid and enforceable.

EXHIBIT D

Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mariner's Club

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MARINER'S CLUB

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MARINER'S CLUB is made and declared by **MARINER'S CLUB HOMEOWNERS ASSOCIATION, INC.**, a Florida corporation not for profit. All Exhibits to the original **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MARINER'S CLUB**, as they may have been amended from time to time, remain unchanged by this amendment, and are reincorporated herein by reference as if attached hereto.

STATEMENT OF BACKGROUND INFORMATION

WHEREAS, the Board of Directors of Mariner's Club Homeowners Association, Inc. ("Association"), applying its business judgment and after examination and investigation, has determined that the Mariner's Club community would be best served by merging with the Mariner's Club Key Largo, Inc. ("Club"), in order to accomplish the following goals:

A. To have a single entity responsible for the operation of the entire community, rather than having responsibilities divided between Association and Club;

B. To establish better fiscal controls and to more efficiently coordinate activities and functions of both organizations; and

C. To gain potential real estate, personal property, sales and other tax advantages; and

WHEREAS, the Board of Directors of Association has determined that the Owners should be permitted to vote upon a Plan of Merger and related amendments to the Governing Documents which would provide for a merger of Association with Club, Association being the surviving entity thereof, in order to accomplish the aforesaid goals; and

WHEREAS, in connection with and as a result of the Merger, certain facilities and tangible and intangible property previously owned by Club (defined below as the "Recreational Facilities") have become Property owned and operated by Association; and

WHEREAS, in connection with and as a result of the Merger, substantial amendments to the Governing Documents are required to reflect and implement the Merger, with such amendments being sufficiently extensive so that, for the sake of convenience and clarity, it is appropriate to amend and restate the original Declaration in its entirety as hereinafter provided;

NOW, THEREFORE, the following Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mariner's Club is adopted:

ARTICLE I

DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified herein. Capitalized terms shall be defined as follows, or, if not defined below, as otherwise defined in the Governing Documents:

1.1 "Articles" shall mean the Articles of Incorporation of Mariner's Club Homeowners Association, Inc., and any amendment thereto, as filed with the Florida Secretary of State.

1.2 "Assessment" means a share of the funds which are required for the payment of Common Expenses or Recreational Facilities Expenses and other expenses identified herein which, from time to time, is assessed against the Members of the Association. Assessments include Base Assessments, Individual Assessments, Special Assessments, and Dues and Charges relating to the Recreational Facilities (including the Membership Contribution), and Capital Contributions.

1.3 "Association" shall mean and refer to the Mariner's Club Homeowners Association, Inc., its successors and assigns.

1.4 "Board" shall mean the Board of Directors of the Association.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association, as such may be amended from time to time.

1.6 "Common Areas" shall mean all real and personal property which the Association owns, leases, or otherwise holds possessory or use rights in, or to which the Association has maintenance responsibilities, all for the common use and enjoyment of the Owners. For example, the Common Areas may include maintenance areas, recreational areas located within the Property, roads, streets, rights-of-way, parking lots, walkways, landscape, boardwalks, piers, sidewalks, street lighting, signage, Environmental Conservation Areas, the Water Management System and all security access areas, including gates and guardhouses. The approximate location of the Common Areas is shown on the Site Plan, as amended from time to time. The Common Areas shall not include the common elements or limited common elements of a Condominium or the Recreational Facilities.

1.7 "Common Expenses" shall mean and include the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Residential Units, including any reasonable reserves, as the Board may find necessary or appropriate pursuant to this Declaration, the Bylaws, and the Articles. Common Expenses shall not include any expenses incurred prior to the Turnover Date for initial development, original construction, installation of infrastructure, original capital improvements, or their original construction costs unless approved by a majority of the

Members of the Association entitled to vote.

1.8 "Condominium" shall mean the property and improvements submitted to condominium ownership pursuant to the Condominium Act.

1.9 "Condominium Act" shall mean Chapter 718, Fla. Stat., as such shall be amended from time to time.

1.10 "Condominium Association" shall mean and refer to any association established pursuant to the Condominium Act. The Association is not a Condominium Association.

1.11 "Condominium Declaration" shall mean and refer to any instrument or document, and any amendments thereto, which is recorded in the Public Records of the County with respect to any neighborhood and which creates a Condominium Association for such neighborhood.

1.12 "Condominium Residential Unit(s)" shall mean and refer to Residential Units within the Property submitted to condominium ownership.

1.13 "County" shall mean Monroe County, Florida.

1.14 "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property, which standard may be reasonably and more specifically determined by the Board.

1.15 "Declaration" shall mean the easements, covenants, conditions, restrictions, and all other terms set forth in this document, as may be amended from time to time.

1.16 "Development" shall mean the entire Mariner's Club community, including the Property, the Residential Units and the Recreational Facilities.

1.17 "Environmental Conservation Area" shall mean that portion of the Common Areas or Recreational Facilities which is intended to be preserved and maintained by the Association in a natural state in perpetuity. The Environmental Conservation Area shall include preserved and created mangroves and hammocks and other areas as more specifically described and located on the Site Plan attached as Exhibit B hereto or specified in any applicable permit.

1.18 Intentionally omitted.

1.19 "HOA Act" means Chapter 720, Fla. Stat., as the same may be amended from time to time, which law shall govern the Development and the Association.

1.20 "Homeowners Documents" means in the aggregate this Declaration, the

Articles, the Bylaws and the Rules and Regulations of the Association and the Recreational Facilities, and all exhibits and amendments thereto.

1.21 "Individual Assessments" shall mean those assessments levied in accordance with Section 8.4 of this Declaration.

1.22 "Initial Property" shall mean the Property originally subjected to the provisions of this Declaration.

1.23 "Institutional Mortgagee" shall mean any lending institution having a first lien on any property subject to this Declaration, including but not limited to any of the following institutions: an insurance company or subsidiary thereof, a federal or state savings and loan association, a federal or state building and loan association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a federal or state banking association, a real estate investment trust, or any mortgage banking company authorized to do business in the State of Florida.

1.24 "Marina" shall mean all boat slips, dry storage spaces and other facilities and services related thereto which are part of the Recreational Facilities, the use of which is provided to Persons in accordance with the Homeowners Documents, the Rules and Regulations governing the Recreational Facilities, and the leases entered into, thereof.

1.25 "Member" shall mean a member of the Association.

1.26 "Mortgage" shall mean a mortgage, a deed to secure a debt, or any form of security deed.

1.27 "Mortgagee" shall mean a beneficiary or holder of a Mortgage. The term, "Mortgagee", shall include the term, "Institutional Mortgagee," defined above.

1.28 "Mortgagor" shall mean a Person who gives a Mortgage.

1.29 "Owner" shall mean and refer to one (1) or more Persons (defined herein) who hold the record title to any Residential Unit which is created within the Property, but excluding any party holding an interest merely as security for the performance of an obligation.

1.30 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.31 "Plat" shall mean that plat of Key Largo North recorded in Plat Book 7 at Page 22 of the Monroe County public records. Certain modifications to the Mariner's Club development plan have been made since the recording of the Plat. These modifications are reflected in the Site Plan for Mariner's Club attached hereto as Exhibit B and in the Notice of Withdrawal of Certificate of Ownership and Dedication recorded in the public records of Monroe County and attached hereto as Exhibit "C". The Site Plan shows,

among other things, changes to the Major Conditional Use Permit authorized by that certain Resolution P59-98 of the Monroe County Planning Commission, File No. 1083903, Book 1536, Page 210, Monroe County Official Records.

1.32 "Property" shall mean all of the real property described in Exhibit "A" attached hereto and made a part hereof, all property formerly owned by the Club and acquired by the Association pursuant to merger (including the Recreational Facilities), and any other property made subject to this Declaration by a Subsequent Amendment, and all improvements now or hereafter located thereon.

1.33 "Recreational Facilities" shall mean all pre-merger Club amenities, including the Marina, swimming pool or pools, Jacuzzis, clubhouse, fitness facilities, tennis courts, boat slips ("Boat Slips"), dry storage slots ("Dry Docks"), the Tarpon Meeting Room, office and storage facilities, and other facilities now operated by the Association pursuant to merger of the Association and the Club, and made available for use in accordance with the Homeowners Documents and the Rules and Regulations governing the Recreational Facilities.

1.34 "Recreational Facilities Expenses" shall mean all dues, fees, Recreational Facilities Assessments, Membership Contributions and other charges related to the Recreational Facilities to be paid by the purchasers of Residential Units upon obtaining a Recreational Facilities Membership.

1.35 "Recreational Facilities Member" shall mean those persons who have been approved for membership in the Recreational Facilities.

1.36 "Repair" shall include to the broadest extent possible those actions listed in Section 8.3(b).

1.37 "Repair Sums" shall mean the amounts described in Section 8.3(b).

1.38 "Reserve Funds" shall mean those amounts described in Section 8.2(f) of this Declaration.

1.39 "Residential Unit" shall mean those portions of the Property, intended for development, use and occupancy as an attached single-family residence. The term shall include all portions of such property owned including the lot and all improvements appurtenant to the residence. It shall not include any improvements constructed within a Common Area easement or a Recreational Facilities easement. The term "Residential Unit" shall include and refer to both Condominium Residential Units and Townhome Residential Units.

1.40 "Roads" shall mean and refer to any street or thoroughfare within the Common Areas, and which is dedicated to the Association, or to any governmental agency, whether same is designated, for example, by way of illustration and not as limitation, as a street, avenue, boulevard, drive, place, court, road, terrace, way, circle,

lane, walk, or similar designation.

1.41 "Rules and Regulations" shall mean the rules, regulations, and policies for the administration and use of the Property, including the Recreational Facilities, which may be adopted and enforced by the Board from time to time without the approval, consent or vote of the Members.

1.42 "Site Plan" shall mean the survey attached hereto as Exhibit "B" and made a part hereof which shows all Residential Units, Recreational Facilities, Recreational Facility easements, Common Areas, Common Area easements, Environmental Conservation Areas and certain other easements. The acceptance of a deed evidences each Owner's agreement to the matters shown on the Site Plan, as it may be amended from time to time. It is specifically understood that the rights described in this Declaration, the Club Plan and documents executed by the Owner supersede and replace the Certificate of Ownership and Dedication on the Plat, in accordance with the Notice of Withdrawal of Certificate of Ownership and Dedication recorded in the Monroe County Public Records.

1.43 "Special Assessment" shall mean and refer to those assessments levied in accordance with Section 8.3 of this Declaration.

1.44 "Subsequent Amendment" shall mean an amendment to this Declaration which may subject additional property to this Declaration, may withdraw property from the coverage of this Declaration, and may also, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the Property, or on any land submitted by a Subsequent Amendment to the provisions of this Declaration.

1.45 "Townhome Residential Unit(s)" shall mean and refer to Residential Units within the Property other than Condominium Residential Units.

1.46 "Water Management District" shall mean the Water Management District which governs the management and operations of the Water Management System.

1.47 "Water Management System" shall mean a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Initial Property. The Property which is initially subject to the covenants, conditions, and restrictions imposed by this Declaration is described in Exhibit "A" attached hereto.

2.2 Recreational Facilities. Pursuant to merger with Club, the Association also owns all property originally owned by Club, which facilities include the Recreational Facilities, the use of which are subject to separate restrictions pursuant to the Homeowners Documents.

2.2 Other Real Property Interests. Any real property rights and/or interests owned by or benefitting the Association, including but not limited to rights and/or interests created through easement agreements may be subjected to the covenants, conditions and restrictions contained in this Declaration.

2.3 Additional Property. Any property submitted to this Declaration by Subsequent Amendment, shall be included in the term "Property."

2.4 Condominium Associations. Condominium Associations which are limited to the Owners of Residential Units within particular neighborhoods located within the Property may be subject to Condominium Declarations which impose covenants and restrictions which are in addition to those imposed hereby, and such Condominium Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such neighborhoods.

ARTICLE III PROPERTY RIGHTS

3.1 Use of Common Areas. Every Owner shall have a right and easement of enjoyment in and to the Common Areas, subject to this Declaration as it may be amended from time to time, and subject to any restrictions or limitations contained in this Declaration or in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to any Rules and Regulations promulgated by the Board, and in accordance with the procedures which the Board may adopt. An Owner who leases his or her Residential Unit shall be deemed to have delegated all such rights to the Residential Unit's lessee. The rights and easements of enjoyment of the Common Areas created hereby shall be subject to the following:

- (a) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real and personal property as security for money borrowed or debts incurred.
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure.
- (c) The right of the Association to suspend:

(i) the right of an Owner to use the Common Areas for any period during which an Assessment or any other charge against such Owner's Residential Unit remains delinquent, so long as any such suspension does not impair an Owner or Owner's tenant right to vehicular and pedestrian ingress to and egress from his Residential Unit (including the right to park); and

(ii) the enjoyment rights and easements of any Owner for a reasonable period for the violation (other than a delinquent Assessment) of any of the Homeowners Documents after notice and hearing pursuant to the Bylaws.

(d) The right of the Association to maintain the Common Areas.

(e) The right of the Board to adopt, amend and enforce Rules and Regulations affecting the use and enjoyment of the Common Areas, including, without limitation, rules restricting the use the Common Areas to occupants of Residential Units and their guests and rules limiting the number of guests who may use the Common Areas.

(f) The right of the Board to post motor vehicle speed limits throughout the Common Areas, to promulgate traffic regulations for the Roads, and to promulgate procedures for the enforcement of the traffic regulations, including, without limitation, the Assessment of fines against Owners who violate the traffic regulations and against Owners, whose family members, guests, tenants, invitees, licensees, employees, or agents violate the traffic regulations. Any such fine shall be imposed and assessed in accordance with the provisions of this Declaration and the Bylaws relating to fines by the Association. All vehicular traffic on the Roads shall also be subject to the provisions of the laws of the state of Florida and Monroe County concerning the operation of motor vehicles. In the event of a conflict between the laws of the state of Florida, Monroe County and the rules and regulations promulgated by the Association, the Association may enforce the strictest provisions. Only drivers licensed to operate motor vehicles by the State of Florida or by any other state in the Residential United States or with an international permit may operate any type of motor vehicle, on any Road, sidewalk or Common Area, within the Property. Notwithstanding the foregoing and subject to policies and rules and regulations imposed by the Association from time to time, persons thirteen and older may operate golf carts on the Roads within the Property.

(g) The right to assess fines as Individual Assessments against Owners who violate any term, condition, restriction or covenant contained in any of the Homeowners Documents, (other than the failure to timely pay Assessments); subject to and in accordance with the provisions relating to the imposition and assessment of fines contained herein and in the Bylaws,

and subject to any limitations in the HOA Act.

(h) The right of the Association to assess late fees and interest for failure to timely pay Assessments in accordance with the HOA Act, this Declaration and the Bylaws.

(i) The right of the Association to suspend the voting rights of a Member for nonpayment of the Assessments and other charges due to the Association for a period longer than ninety (90) days from the date in which the Assessment or such other charges became due.

(j) The right of the Association to dedicate or transfer all, or any part, of the Common Areas to any governmental or quasi-governmental agency, authority, utility, water management or water control district.

(k) The restrictions contained on any plat, or filed separately, with respect to all or any portion of the Property.

(l) All of the provisions of the Homeowners Documents.

(m) The Owners' easements of enjoyment shall be subject to easements, hereby reserved over, through and underneath the Common Areas for present and future utility services to the Property, including, but not limited to, easements for water pipes, sanitary sewer pipes, drainage pipes, irrigation pipes, telephone cables, and street lights.

(n) In case of any emergency originating in, or threatening the Property or any Residential Unit, regardless of whether the Owner is present at the time of such emergency, the Board, or any other Person authorized by the Board, or the management agent under a management agreement, shall have the right to enter the Property or such Residential Unit, for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

(o) The restrictions contained in Article 19 or elsewhere in the public records of Monroe County regarding Environmental Conservation Areas.

3.2 Use of the Recreational Facilities. Pursuant to a merger with the Club, the Association has acquired certain Recreational Facilities as described in this Declaration. The use of the Recreational Facilities are subject to acquisition of a Recreational Facilities Membership and all restrictions found in the Homeowner Documents and the Recreational Facilities Rules and Regulations, as they may be promulgated by the Board from time to time.

(a) The Association shall have the right to lease to any Recreational Facilities Member, for up to ten (10) years, the Boat Slips or Dry Docks that

are part of the Recreational Facilities, which leases shall be subject to any restrictions found in the Homeowner Documents. Any leases existing prior to the merger of the Association and Club shall remain valid, regardless of whether the term of such leases exceeds ten (10) years, and may be extended, transferred or renewed pursuant to the terms of the original lease.

3.3 Title to Common Areas. Notwithstanding the manner in which title is held, the Association shall be responsible for the management, maintenance, and operation of the Common Areas and the Recreational Facilities, and for the payment of all real estate taxes and other charges which are liens against the Common Areas and Recreational Facilities, from and after the recording of this Declaration.

ARTICLE IV

ASSOCIATION FUNCTION: MEMBERSHIP AND VOTING RIGHTS

4.1 Function of Association. The Association shall be the entity responsible for the management, maintenance, operation and control of the Common Areas and other designated areas within the Property. The Association shall be the primary entity responsible for enforcement of the Homeowners Documents. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles, the Rules and Regulations, and Florida law.

4.2 Membership. The Association shall have one (1) class of membership. A Person shall automatically become a Member upon acquisition of fee simple title to any Residential Unit, by recording a deed in the Public Records of the County. Membership shall continue until such time as the Member transfers or conveys his interest of record or the interest is transferred or conveyed by operation of law, at which time Membership, with respect to the Residential Unit conveyed or transferred, shall automatically be conferred upon the transferee. Membership shall be appurtenant to, and may not be separated from, ownership of the Residential Units. No person or entity holding an Interest of any type or nature whatsoever in a Residential Unit as security for the performance of an obligation, shall be a Member of the Association.

4.3 Voting. Matters on which Members are entitled to vote shall be determined by a majority of the votes cast, except where otherwise provided in the Governing Documents. Each Member shall be entitled to one (1) equal vote for each Residential Unit owned by such Member, as to matters on which the Members are entitled to vote. When more than one person or entity holds title to a Residential Unit, such persons or entities shall together constitute one Member and the vote attributable to such Residential Unit shall be exercised as they, among themselves, determine, with notice of such determination in writing to the Association secretary; provided, however, that in no event shall more than one (1) vote be cast with respect to each Residential Unit. As for any Member that is an entity other than a natural person, the entity shall likewise file with the Association's secretary a written notice designating the name of an individual who shall

be authorized to represent the Member's vote for that Residential Unit.

4.4 Proxies. Members may vote by proxy. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be filed in writing, signed by the person authorized to cast the vote for the Residential Unit and filed with the Association's secretary before the commencement of the applicable meeting, or before the time a meeting is adjourned. No proxies may be used in the election of Directors of the Association.

ARTICLE V RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5.1 Common Areas and Recreational Facilities. The Association, subject to the rights of the Owners as set forth in this Declaration, shall own, manage, and control the Common Areas and Recreational Facilities, and all Improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas) and shall Keep them in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

5.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. All such property shall be accepted by the Association, and thereafter shall be maintained as a Common Area or Recreational Facility, as designated in this Declaration, by the Association for the benefit of the Members, subject to any restrictions set forth in the conveying deed or instrument.

5.3 Rules and Regulations. The Association, through its Board, may make and enforce reasonable rules governing the use of the Property, in addition to, further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules shall be binding upon all Owners and all occupants, invitees, employees, agents and licensees of the Owners until and unless repealed or modified by the Board in its sole discretion without the consent of the Owners.

5.4 Implied Rights: Board Authority. The Association may exercise any other right or privilege given to it expressly by the Homeowners Documents or reasonably implied from or reasonably necessary to effectuate any right or privilege contained therein. Except as otherwise specifically provided In the Homeowners Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Membership.

5.5 Indemnification. The Association shall indemnify every Officer, Director and

committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an Officer, Director, or committee member.

The Officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The Officers and Directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such Officers or Directors may also be Members of the Association). The Association shall indemnify and forever hold each such Officer, Director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former Officer, Director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and Officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.

5.6 Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the County, or to any other local, state, or federal governmental entity, subject to such approval as may be required by this Declaration.

5.7 Security. The Association may, but shall not be obligated to, make improvements to, and/or maintain or support certain activities within the Property designed to make the Property safer than they otherwise may be. THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, ALARM SYSTEM, OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS, OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS LESSEES, GUESTS, LICENSEES AND INVITEES THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO RESIDENTIAL UNITS, AND TO THE CONTENTS OF RESIDENTIAL UNITS RESULTING FROM ACTS OF THIRD PARTIES.

5.8 Recycling Programs. The Association may establish a recycling program and recycling center within the Property and in such event, all occupants of Residential Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate.

The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

5.9 Surface Water Rights. The Association may establish programs for reclamation of surface water and storm water runoff for appropriate uses within the Property, and may require Owners and occupants of Residential Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Residential Unit shall have any right to be compensated for water claimed or reclaimed from the Property. The Board shall also have the right to establish restrictions on the use of surface water within the Property. Open surface waters within the Property may be designed as water retention and water management areas. From time to time, low ground water elevations or drought conditions may cause such water retention and management areas within the Property to be shallow.

5.10 Water Management System.

(a) Maintenance of Water Management System. The Association shall be responsible for the maintenance, operation and repair of the Water Management System. Maintenance of the Water Management System shall mean the exercise of practices which allows the system to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities. As further provided in this Declaration, the Association shall be entitled to (i) assess Members for the cost of operation, maintenance and repair of the Water Management System including but not limited to work within retention areas, drainage structures and drainage easements, (ii) establish rules and regulations with respect to the operation and maintenance of the Water Management System, and, (iii) contract with third parties for the provision of such operation and maintenance. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow a drainage swale to provide drainage, water storage, conveyance or other stormwater management capabilities. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in a drainage swale is prohibited.

(b) Notices and Disclaimers as to Water Bodies. NEITHER THE ASSOCIATION NOR ITS OFFICERS, DIRECTORS, COMMITTEE OR BOARD MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, BROKERS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES"). SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN THE MARINA OR ANY OTHER WATER BODY WITHIN OR NEAR THE PROPERTY (COLLECTIVELY, "WATER BODIES") EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED OR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR

AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY, FROM TIME TO TIME, EXCAVATE, CONSTRUCT AND MAINTAIN WATER BODIES WITHIN OR IN PROXIMITY TO THE PROPERTY. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH SUCH OWNER, OCCUPANT OR USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW CHILDREN, GUESTS OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY OF THE AFORESAID WATER BODIES, EXCEPT AS SPECIFICALLY PERMITTED BY THIS DECLARATION; (iii) ASSOCIATION AND THE OTHER LISTED PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS, FROM ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES; AND (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND SHALL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE, TREES, PLANTS OR OTHER MATERIALS MAY INHABIT OR ENTER INTO THE WATER BODIES AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE, VEGETATION OR OTHER MATERIALS.

(c) Indemnification. Each Owner shall severally indemnify, defend and hold the Association harmless from and against any and all costs, expenses, liabilities, fines, penalties and clean-up costs incurred by the Association as a result of any damage or alteration to the Water Management System or Marina caused by such Owner, or any unlawful discharge of such Owner into the Water Management System or Marina. In the event any damage to the Water Management System or Marina by an Owner is not reimbursed by such Owner upon demand, the Association shall levy and assess an Individual Assessment against such Owner to

cover the cost incurred by the Association in correcting such damage, alteration or unlawful discharge, and shall pay over the amount thereof to the Association.

ARTICLE VI MAINTENANCE

6.1 Association's Responsibility

(a) The Association shall maintain and keep in good repair the Common Areas, the Recreational Facilities and designated portions of Townhome Residential Units. The maintenance of the Common Areas, Recreational Facilities and designated portions of Townhome Residential Units shall include, without limitation, the maintenance, repair, and replacement thereof, subject to any insurance then in effect. All townhome driveways, exterior structural walls and stairways shall be maintained and repaired by the Association, and assessed to the Townhome Residential Unit Owners, either as an Individual Assessment or using appropriate Reserves.

(b) The cost to the Association of maintaining the Common Areas and Recreational Facilities shall be assessed among the Residential Units as part of the Common Expenses pursuant to the provisions of this Declaration. The assessment formula for each Residential Unit is set forth in Exhibit "F" attached hereto and made a part hereof. The cost to the Association of maintaining designated portions of Townhome Residential Units shall be assessed to the Townhome Residential Unit Owner(s) as an Individual Assessment.

(c) In addition to maintaining portions of the Townhome Residential Units, the Association may maintain other property which it does not own, including, without limitation, property dedicated to the public.

(d) The Association shall install and maintain the irrigation system, lawn and landscaping of the Common Areas, Recreational Facilities and of the Residential Units. Such maintenance shall include, but shall not be limited to maintenance, repair, and replacement, subject to any insurance then in effect (if appropriate) of all plantings, sodding, and irrigation system, which irrigation system shall be designed to serve the entire Property of this Declaration. The Association shall also maintain the entire roof of each Townhome Residential Unit building, any and all Townhome Residential Unit roof structure support, and any and all appurtenances to such structures, including, without limitation, the roof covering, roof trim and roof drainage features although the roofing shall not be considered a Common Area. The cost to the Association of the maintenance of the roofs of the Townhome Residential Units described in this paragraph shall be assessed

to the Townhome Residential Unit Owner(s) as an Individual Assessment. The cost to the Association of the maintenance of the irrigation system, lawn and landscaping of the Common Areas, Recreational Facilities and the Residential Units as described in this paragraph shall be assessed among all Residential Unit Owners as part of the Common Expenses. This provision is not intended to make the Association the insurer of any Residential Unit, except as provided in Article X.

(e) The Association shall be responsible for garbage pickup and removal. The procedure for such pickup and removal shall be established by the Association, in its sole discretion. The costs associated with such pickup and removal shall be borne by each Residential Unit Owner.

(f) The Association shall maintain, in perpetuity and as a Common Expense, that certain water holding tank and water propulsion system serving the Property.

(g) The Association is not responsible for the maintenance of any Condominium property, the responsibility for which maintenance is dedicated to a Condominium Association pursuant to a Condominium Declaration.

6.2 Owner's Responsibility.

(a) Except for those maintenance activities expressly assumed by the Association pursuant to this Declaration, including those in Section 6.1(a)-(d) above, each Residential Unit Owner shall maintain his or her own Residential Unit, (and with respect to Townhome Residential Units, all boundary walls and fences, sidewalks and balconies thereof), and each Condominium Association shall maintain its building and all common elements thereof, in good condition and repair, in a manner consistent with the Community-Wide Standard, and all applicable covenants, and in a like condition, appearance, and quality as originally constructed. Notwithstanding the foregoing, the Association shall be responsible for normal and routine pressure cleaning, and refinishing of the roofing, boundary walls and fences of Townhome Residential Units. The Board shall determine the need for such cleaning and painting from time to time. All costs reasonably related to said cleaning and painting of Townhome Residential Units shall be assessed to the Townhome Residential Unit Owner(s) as an Individual Assessment. While normal cleaning, repainting and refinishing of the exterior surfaces shall be done uniformly at the same time for all Townhome Residential Units by the Association, a Townhome Residential Unit Owner may perform such cleaning, repainting or refinishing at his own expense with the prior written consent of the ACC.

(b) Those walls, structures, or fences, which may be constructed

between two adjoining Residential Units and are to be shared by the Owners of said adjoining Residential Units, are to be known as and are hereby declared to be "Party Walls." The center line of a Party Wall is the common boundary of the adjoining Residential Unit. The cost of maintaining each side of a Party Wall shall be borne by the Residential Unit Owner using said side, except as otherwise provided herein. Each adjoining owner of a Party Wall, his heirs, successors, and assigns shall have the right to use same jointly with the other party to said Wall as herein set forth. The term "use" shall and does include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original concrete forming said Party Wall.

(c) Each Residential Unit Owner shall have the right to full use of a Party Wall subject to the limitation that such use shall not infringe on the rights of the Owner of the adjacent Residential Unit or in any manner impair the value of said wall. Each Owner shall have the right and duty to maintain and to perform superficial repairs to that portion of a Party Wall which faces such Owner's Residential Unit. The cost of said maintenance and superficial repairs shall be borne solely by said Owner. In the event of damage or destruction of the Party Wall from any cause whatsoever, other than negligence or willful misconduct of one of the adjacent Residential Unit owners, the Owners of the adjacent Residential Units shall, at their joint expense, repair and rebuild said wall within 30 days, unless extended by the Board. In the event it is necessary to repair or rebuild a Party Wall, the Owners shall agree on the cost of such repairs or rebuilding, and shall agree on the person or entity to perform such repairs, provided however, all such repairs must be performed by a licensed and insured contractor. If the Owners cannot agree on the cost of such repairs or on the person or entity to perform such repairs, each Owner shall choose a member of the Board to act as their arbiter. The Board members so chosen shall agree upon and choose a third Board member to act as an additional arbiter. All of the said Board members shall thereafter choose the person or entity to perform the repairs and shall assess the costs of such repairs in equal shares to the Owners. Whenever any such wall or any part thereof shall be rebuilt, it shall be erected in the same manner and be of the same size and of the same or similar materials and of like quality and color and at the same location where it was initially constructed. Provided, that if such maintenance, repair or construction is brought about solely by the neglect or the willful misconduct of one Residential Unit Owner, any expense incidental thereto shall be borne solely by such wrongdoer. If the Residential Unit Owner shall refuse to repair or reconstruct the wall within 30 days, unless extended by the Board, and to pay his share, all or part of such cost in the case of negligence or willful misconduct, the Association may have such wall repaired or reconstructed and shall be entitled to a lien on the Residential Unit of the Residential Unit Owner so failing to pay for the amount of such defaulting

Owner's share of the repair or replacement. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Residential Unit shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner, and consent is hereby given to enter on the adjacent lots to effect necessary repairs and reconstruction.

(d) If a Residential Unit is damaged solely by the negligent or willful misconduct of a Residential Unit Owner, any expense to repair or reconstruct the Residential Unit shall be borne solely by such wrongdoer. If a Residential Unit is damaged through an act of God or suffers some other casualty loss, the affected Owner shall promptly have his Residential Unit repaired and rebuilt substantially in accordance with the original architectural plans and specifications of the Residential Unit building, as they may be modified pursuant to the Declaration and the approval of the ACC. If the Residential Unit Owner refuses or fails to pay the cost of such repair or reconstruction (which costs may be treated as an Individual Assessment), or if insurance proceeds are insufficient to repair or rebuild the affected Residential Unit(s) the Association shall have the right to specially assess all Members of the Association for the costs of such repair and reconstruction, and the Association shall thereafter have the right to complete such repair and reconstruction substantially in accordance with the original plans and specifications of the affected building as they may be modified with the approval of the ACC. If the Members are specially assessed in accordance herewith, the Association shall have the right to lien the repaired or reconstructed Residential Unit for a reimbursement of all expenditures of the Association in connection with the repair or reconstruction, including without limitation all repair or reconstruction costs, interest, costs, professional fees and any other related expenses. Upon payment and satisfaction of such a lien, the reimbursement of such costs and fees shall be added to the funds of the Association. The assessments and collection of such assessments authorized pursuant to this paragraph shall be made in accordance with the assessment powers and lien rights of the Association.

(e) If any Owner or Condominium Association fails to perform its maintenance responsibility, the Association may perform it and assess all costs incurred by the Association against the Residential Unit and the Owner thereof, or against such Condominium Association, as applicable, in accordance with this Declaration; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

(f) The provisions of Section 6.2(b) and (c) shall only apply to Townhome Residential Units.

ARTICLE VII EASEMENTS

7.1 Access and Use Easements.

(a) There hereby is granted a perpetual non-exclusive easement to the Association, to the Owners, and to their families, guests, invitees, licensees, agents, employees and lessees upon, over, and across the bicycle/pedestrian paths, sidewalks, walkways, rights-of-way, Roads and other Common Areas and across any portion of a Residential Unit shown as a Common Area easement on the Site Plan for access purposes. There hereby is granted an additional perpetual non-exclusive easement to the Association over, across, through, and under all portions of the Property for the purpose of performing the maintenance and repair requirements of the Association as described in this Declaration. Except in the event of an emergency or as otherwise provided In this Declaration, the Association, its assigns or representatives may enter the structure of a Residential Unit only after reasonable notice has been given to the Owner.

(b) There is hereby granted to the Owners, and to their families, guests, invitees, licensees, agents, employees and lessees a perpetual easement over, through and across the Common Areas and those areas designated on the Site Plan as Common Area easements and Recreational Facilities easements specifically including those portions of Residential Units designated as such for the purposes of enjoyment, use, access, maintenance, development and ongoing operation of the Recreational Facilities, including the right to post signs and park. There is further granted to the Members of the Association and to the Association, its successors, assigns, employees, agents and licensees, a perpetual easement over, through and across the Common Areas and those areas designated on the Site Plan as Common Area easements specifically including those portions of Residential Units designated as such for purposes of enjoyment, use, access, maintenance and ongoing operation of the Common Areas. Each Owner acknowledges that any portion of his or her Residential Unit subject to a Common Area or Recreational Facilities easement on the Site Plan may be permanently used for recreational and other purposes and may have permanent structures such as swimming pools and gathering areas located thereon. The portions of an Owner's Residential Unit which are subject to a Common Area easement or a Recreational Facilities easement may be used by the Owner only in his or her capacity as a Member of the Association or a Recreational Facilities Member and such Owner shall have no other right to use that portion of his or her Residential Unit.

7.2 Easements for Utilities.

(a) There is hereby reserved to the Association, and its assignees and

designees, access and maintenance easements upon, over, across, and under all of the Property to the extent reasonably necessary for the purpose of installing, constructing, replacing, repairing and maintaining Roads, bicycle/pedestrian paths, walkways, sidewalks, lakes, wetlands, drainage systems, street lights, identification signage, and all utilities, including, without limitation, water, irrigation, sewer, electricity, telephone, cable tv, or communication lines and systems, and for the purpose of installing any of the foregoing.

Any damage to a Residential Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Residential Unit, and, except in an emergency, entry onto any Residential Unit shall be made only after reasonable notice to the Owner or occupant.

(b) There is hereby granted a perpetual non-exclusive easement to all utility or service companies servicing the Property, over, across, through, and under the Common Areas and such other portions of the Property on which utility facilities may be located for ingress, egress, installation, construction, replacement, repair, and maintenance of all utility and service lines and systems including, but not limited to water, irrigation, sewer, telephone, electricity, cable TV, or communication lines and systems and for the purpose of reading meters in connection therewith. It shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said Property, to excavate for such purposes and to affix and maintain wires, facilities, circuits, and conduits on, in, and under the Common Areas or any other portion of the Property, providing such company restores any disturbed area substantially to the condition existing prior to their activity; provided, however, that no utility service line or system may be installed or relocated within the Common Areas or any other portion of the Property without the consent of the Association.

7.3 Easements for Encroachments. In addition to the permanent use easements shown on the Site Plan, the Association hereby reserves the right to grant easements for encroachment in the event any improvements upon the Common Areas or Recreational Facilities now or hereafter encroaches upon a Residential Unit, or In the event that any Residential Unit now or hereafter encroaches upon the Common Areas, or in the event that any Residential Unit now or hereafter encroaches upon any other Residential Unit, as a result of minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement or otherwise (specifically including those encroachments recorded at the time of conveyance of the Residential Unit regardless of cause or size). The encroaching improvements shall remain undisturbed as long as the encroachment exists. This easement for encroachment shall also include an easement for the maintenance and use of the encroaching improvements. Provided, however, that

at no time shall there be any encroachment onto the Environmental Conservation Area.

7.4 Easements for Drainage. All Residential Units, Common Areas and Recreational Facilities shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property; provided, however, no Person may alter the natural drainage on any Residential Unit, Common Area or Recreational Facility so as to materially increase the drainage of storm water onto adjacent property without the consent of the Owner of the affected property.

7.5 Right of Entry. The Association shall have the right, but not the obligation to enter the interior of any Residential Unit for emergency, security, and safety reasons, to perform maintenance pursuant to this Declaration, and to inspect for the purpose of ensuring compliance with the Homeowners Documents, which right may be exercised by any member of the Board, its Officers, agents, employees, and managers, and all policemen, firemen, emergency medical personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, as provided in Article III, Section 3.1(o); or as otherwise provided in the HOA Act or the Governing Documents; entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Residential Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after a written request of the Board. No such entry shall be deemed to be a trespass.

ARTICLE VIII ASSESSMENTS

8.1 Creation of Assessments. There are hereby created Assessments for Common Expenses as may from time to time specifically be authorized by the Board in the manner set forth in this Article. There shall be four (4) types of Assessments: (a) Base Assessments to fund expenses for the benefit of all Members of the Association; (b) Recreational Facilities Assessments, which shall include the Membership Contribution, and also Recreational Facilities Dues and Charges; (c) Special Assessments as described herein; and (d) Individual Assessments as described herein.

(a) Base Assessments shall be levied against all Residential Units based on the calculation described in Exhibit "F" attached hereto. Recreational Facilities Assessments shall be levied according to each Member's level of Membership and concomitant level of use of the Recreational Facilities, as determined from time to time by the Board. Special Assessments and Individual Assessments shall be levied as provided herein. Each Owner, by acceptance of his or her deed is deemed to covenant and agree to pay these Assessments.

(b) The Association shall, upon demand at any time, furnish to any Owner liable for any type of Assessment a certificate in writing signed by an

Officer of the Association setting forth whether such Assessment has been paid as to any particular Residential Unit. Such certificate shall be conclusive evidence of payment to the Association of such Assessments stated therein.

(c) Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless the Board otherwise provides, the Base Assessments shall be payable not less frequently than quarter-annually in advance. Unless the Board otherwise provides, the Base Assessments shall be billed on the fifteenth day of December, March, June, and September of each year for Assessments due and payable on the first day of January, April, July, and October, respectively of each year. In the event that any Owner fails to pay said Assessments in a timely manner, the Association shall be entitled to accelerate all of the annual Assessment and impose upon such Owner late penalties and interest on the whole annual Assessment from the date the Assessment was due until paid, in accordance with applicable law. In addition, the Association may collect as part of a delinquent Assessment all costs (including attorney, court and appellate fees, and collection costs) incurred by the Association relating to the collection of Assessments (including interest and late fees at the highest amount allowable by law) and the enforcement of liens securing the payment thereof.

(d) No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, by way of illustration and not limitation, by non-use of the Property or abandonment of the Residential Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution of abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of the County or other governmental authority.

(e) The Association may deny an Owner the use of any or all Common Areas or Recreational Facilities for any period during which any monetary obligation to the Association allocable to his or her Residential Unit remain unpaid or delinquent for more than ninety (90) days. In addition, the Association may suspend an Owner's right to vote at meetings during which Owners are entitled to vote, in the event that an Owner is delinquent in the payment of any monetary obligation to the Association for a period greater than ninety (90) days from the date such obligation become due.

8.2 Computation of Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year, to prepare a budget covering the estimated costs of operating the Association during the coming year, including the estimated costs of operating the Recreational Facilities. The budget shall include and shall separately list all revenues and Common Expenses, and an estimate of the previous year's surplus or deficit. The Board shall cause a copy of the budget and the amount of Assessments to be levied against each Residential Unit and Recreational Facilities Member for the following year to be delivered to each Owner, or to be made available to each Owner, within the time limits established in the Bylaws for inspection of Association records and books. Notwithstanding the foregoing, however, In the event the Board fails for any reason to establish the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year. The Assessments collected for the costs of operating the Association and the Recreational Facilities may be commingled.

The budget may include, but shall not be limited to, the following listed line items:

- (a) All expenses necessary to meet the Association's maintenance responsibilities In accordance with the requirements of this Declaration, including, by way of illustration and not as limitation, such expenses as maintenance of the Water Management System (including any maintenance charges for the Off-site Water Management System defined herein), irrigating, grass cutting, trimming, fertilizing, pest control, and the like, in a manner consistent with the Community-Wide Standard.
- (b) All charges levied for utility and security services to the Common Areas or Recreational Facilities, whether supplied by a private or public firm including, without limitation, all charges for water, electricity, telephone, sewer, cable TV, and any other type of utility or service charge.
- (c) The premiums on any policy or policies of insurance required under this Declaration, together with the costs of such other policies of insurance as the Board may determine to be in the best interest of the Association (specifically including but not limited to fire, extended coverage and flood insurance on all or any portion of Residential Units), as well as all expenses necessary to retain and continue to retain a lending institution in the County, having a trust department to act as "Insurance Trustee." The functions of the Insurance Trustee may include holding all original policies purchased by the Association, being named as loss payee, distributing proceeds of such insurance, assisting in the reconstruction of improvements from insurance premiums and performing such other functions as shall be agreed upon.
- (d) The costs of administration for the Association, including any secretaries, bookkeepers, managers and other full-time or part-time employees necessary to carry out the obligations and covenants of the

Association under the Homeowners Documents, including the collection of sums owed by a particular Residential Unit. In addition, the Association may retain a managing company or other contractors, companies or Persons to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs incurred by the Association pursuant to any such contract shall be deemed to be part of the Association's expense.

(e) All taxes levied or assessed upon the Common Areas or Recreational Facilities, by any and all taxing authorities, including all taxes, charges and Assessments, imposition and liens for public improvements, special charges and Assessments; and, in general, all taxes on personal property and improvements which are now and which hereinafter may be placed in the Common Areas or Recreational Facilities, including any interest penalties and other charges which may accrue on such taxes.

(f) The cost to the Association to indemnify its Officers and members of the Board for all costs and expenses whatsoever incurred in pursuance of their duties, obligations and functions hereunder.

(g) The costs to establish adequate reserve funds for replacement and/or capital refurbishment of the Common Areas, Recreational Facilities, Water Management System and the payment of other expenses (the "Reserve Funds") in the amounts determined proper and sufficient by the Board, if any. Each Owner acknowledges and understands that Reserve Funds are the exclusive property of the Association as a whole, and that no Owner shall have any interest, claim or right to any such Reserve Funds or funds composed of the same. The Association shall be responsible for maintaining the Reserve Funds in a separate reserve account ("Reserve Account") and to use such funds only for capital costs and expenses as aforesaid. Reserve funds collected prior to the merger shall not be used for replacement or capital refurbishment of the Recreational Facilities.

8.3 Special Assessments.

(a) The Association may levy a Special Assessment or Special Assessments against all Owners. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) The Association may levy a special assessment to obtain all sums necessary to repair, replace, construct or reconstruct (collectively, "Repair") any buildings or improvements located in the Common Areas, Recreational Facilities or any Residential Units which are damaged by any casualty, to the extent insurance proceeds are insufficient for repair. Any difference

between the amount of insurance proceeds received on behalf of the Association with respect to repair of Common Areas or Recreational Facilities and the actual cost of such repair ("Repair Sums") shall be a Common Expense for which the Association shall levy a Special Assessment against all Residential Units to obtain the funds necessary to pay for such Repair Sums within ninety (90) days from the date such damage was incurred. The Association may establish an account with an Institutional Mortgagee located in the County, and deposit into such account all repair sums and all insurance proceeds so that the amounts on deposit shall equal the costs of the Repair. The Association shall proceed so that the Repairs shall be completed within one (1) year from the date of damage, if possible.

(c) The Association may levy a Special Assessment for any other purpose deemed necessary by its Board.

8.4 Individual Assessments. The Association may impose an individual assessment against the appropriate Owner(s) and their respect Residential Units for any of the following:

- (a) to recover any expenses incurred by the conduct of less than all of the Owners or by the family, tenants, agents, guests or invitees of any Owner;
- (b) to recover any expenses incurred by the Association in bringing a Member and his Residential Unit into compliance with the provisions of the Homeowners Documents;
- (c) to collect fines imposed by the Association for non-compliance with any of the terms, covenants or conditions of any of the Homeowner's Documents;
- (d) to cover the cost of Repair or any maintenance of a Residential Unit or a Residential Unit building required or permitted by the Association in this Declaration.
- (e) to recover any expenses for the cost of Residential Unit Property Insurance, as defined in Section 10.2; and
- (f) to recover any Recreational Facilities Expenses properly due from an individual Recreational Facilities Member, and not from the Members as a whole.

The Individual Assessments provided for in this Section 8.4 shall be levied by the Board and the amount and due date thereof shall be as specified by the Board.

8.5 **Recreational Facilities Assessments.** Expenses related to the Recreational Facilities, including, but not limited to, the Membership Contribution; Dues; Charges; Expenses and the Association's costs of operating, maintaining and improving the Recreational Facilities in any manner shall be charged to the Members as either a Recreational Facilities Assessment, a Special Assessment or an Individual Assessment, subject to all rights of collection pursuant to the Homeowners Documents and the HOA Act, including the rights established in Article IX, below. The amount of the Membership Contribution shall be as determined by the Board from time to time.

8.6 **Capital Contribution.** Each Owner or group of Owners that acquires title to a Recreational Unit shall be obligated to pay the Association, as a Capital Contribution, an amount equal to half of the total budgeted annual assessment that is allocated to such Residential Unit, excluding Recreational Facilities Assessments; or such other amount as may be determined by the Board from time to time. If the Board establishes a Capital Contribution amount that is different than specified herein, notice of such change shall be sent to each Residential Unit Owner by mail, at least fourteen (14) days in advance of the enforcement of such amount against any new Residential Unit Owner. All collected Capital Contributions are separate from, and in addition to, all other collected assessments described above. Such Capital Contributions may be used for any Association purpose as determined by the Board of Directors, including maintenance of the Common Elements, capital improvements, and/or operating expenses. The Capital Contribution shall be collectable as an assessment, and if unpaid shall be subject to the Association's full right and power to collect such assessment, including, but not limited to, the right of lien and foreclosure pursuant to Article IX, below.

8.7 **Date of Commencement of Base Assessments and Recreational Facilities Assessments.** The Base Assessments and Recreational Facilities Assessments provided for herein shall commence as to each Residential Unit at the time that a certificate of occupancy is issued for the Residential Unit by the appropriate governmental authority. Assessments shall be due and payable in a manner and on a schedule as the Board may provide. The first Base Assessment shall be adjusted according to the number of days remaining in the fiscal year at the time Assessments commence on a Residential Unit.

8.8 **Exempt Property.** Notwithstanding anything to the contrary herein, all Common Areas, Recreational Facilities and all property dedicated to and accepted by any governmental authority or public utility shall be exempt from the payment of Assessments.

ARTICLE IX ESTABLISHMENT AND ENFORCEMENT OF LIENS

9.1 **Lien for Assessments.** All Assessments authorized in this Declaration, together with interest at a rate not to exceed the highest rate allowed by Florida law as computed from the date the delinquency first occurs, late charges (at the highest amount

allowed by law), costs of collection, attorney's fees and court costs, shall be a charge on the land, and shall be a continuing lien upon the Residential Unit against which each Assessment is made and against all Residential Units owned by the Owner. Each such Assessment, together with interest and late charges, costs of collection, attorney's fees and court costs, shall also be the personal obligation of the Person who was the Owner of such Residential Unit at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance (except as set forth in Section 9.3 hereof).

9.2 Effective Date of Lien. Said liens shall be effective only from and after the time of recordation, amongst the Public Records of the County, of a written, acknowledged statement either by the Association setting forth all of the amounts due to the Association as of the date the statement is signed. Upon recording, there shall exist a perfected lien for all unpaid Assessments, interest thereon, late charges, cost of collection, attorney's fees and court costs, which except as otherwise provided herein, shall be prior and superior to all other liens, except (i) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (ii) the lien or charge of any existing first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of lien.

9.3 Rights of First Mortgagees. When any first Mortgagee obtains title to a Residential Unit as a result of foreclosure of a Mortgage, or a deed (or assignment) given in lieu of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the Assessments pertaining to such Residential Unit or chargeable to the former Owner which became due prior to the acquisition of title as a result of the foreclosure or obtaining a deed (or assignment) in lieu of foreclosure except as provided in the HOA Act, unless such Assessments are secured by a Claim of Lien, which is recorded prior to the recordation of the first Mortgage. Such unpaid Assessments for which a Claim of Lien has not been recorded prior to the recording of such first Mortgage shall be assessed by the Association against all Residential Units.

Notwithstanding any term herein to the contrary, for all mortgages encumbering a Residential Unit and recorded in the Public Records after the effective date of this Amended and Restated Declaration; and, to the extent allowable under Florida law, for all mortgages encumbering a Lot or Tract and recorded in the Public Records on or before the effective date of this amendment; the provisions of Section 720.3085, Fla. Stat., as now exist or may hereafter be amended, shall apply to the Mortgagee's obligation for the payment of Assessments or other charges accruing prior to the date the Mortgagee obtains title to the Residential Unit. In addition, and notwithstanding the foregoing, any other purchaser or other person who otherwise acquires title at a foreclosure sale shall be governed at all times by the provisions of Chapter 720, Fla. Stat., as may now exist or may hereafter be amended from time to time. An Owner is jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of transfer of title, including but not limited to foreclosure and/or deed in lieu of foreclosure except as provided under law pursuant to Section 720.3085, Fla. Stat., as same may be amended

from time to time.

9.4 Remedies, in the event any Owner shall fail to pay his or her Assessments within fifteen (15) days after the same becomes due, the Association, through its Board, shall have, among others, all of the following remedies to the extent permitted by law:

(a) To accelerate the entire amount of any Assessments for the remainder of the year notwithstanding any provisions for the payment thereof in installments.

(b) To advance on behalf of the Owner funds to accomplish the needs of the Association and the amount or amounts of money so advanced, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of, or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of said Owner, together with interest at the highest rate allowable by law, may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the Owner's default hereunder.

(c) To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in a like manner as the foreclosure of a mortgage on real property.

(d) To file an action at law to collect said Assessments, plus interest at the highest rate allowable by law plus costs and attorneys' fees, without waiving any lien rights or rights of foreclosure by the Association.

9.5 Rights upon Foreclosure. The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period in which the Residential Unit is owned by the Association following foreclosure: (a) no Assessment shall be assessed or levied on it; and (b) each other Residential Unit shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. Suit by the Association to recover a money judgment for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing the same.

9.6 Association Exemption. Notwithstanding any other provisions in this Declaration, in the event the Association shall ever acquire title to a Residential Unit through a lien foreclosure or otherwise, the Association shall not be required to pay assessments, dues, fees, costs or any other charges which are due, past due or may become due upon such Residential Unit and, in such event, the prior Owner of record shall remain responsible and obligated to pay for all assessments, dues, fees, costs and charges that are due and become due upon such Residential Unit until such time as the

title to such Residential Unit is transferred or conveyed to a new Owner. Additionally, the new Owner shall be jointly and severally liable with the prior Owner for all amounts due upon any such Residential Unit.

9.7 Adoption of Amendments to Chapter 720, Fla. Stat. Notwithstanding any other provisions in this Declaration, the Association shall be bound by and adopts Chapter 720, Fla. Stat., as it may be amended from time to time.

ARTICLE X INSURANCE

10.1 Common Area and Recreational Facility Insurance. The Association shall maintain a policy or policies to insure the Common Area and Recreational Facility improvements and personal property located therein from loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and other casualty, such coverage to be in an amount sufficient to cover at least 80% of the full replacement cost (subject to such deductible amounts as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard and shall be in such form as the Board deems appropriate. Such insurance may also insure that portion of any Residential Unit which is subject to a Recreational Facilities easement or a Common Area easement from such losses.

When appropriate and possible, the policies shall waive the insurer's right to:

- (a) Subrogation against the Association and against the Owners, individually and as a group;
- (b) The prorate clause that reserves to the Insurer the right to pay only a fraction of any loss if other insurance carriers have issued coverage upon the same risk; and
- (c) Avoid liability for a loss that is caused by an act of the Board, or by a member of the Board or by one or more Owners.

In addition, the policy shall provide that:

- (a) Any Insurance Trust Agreement shall be recognized;
- (b) The policy shall be primary, even if an Owner has other insurance that covers the same loss; and
- (c) The named insured shall be the Association for the use and benefit of all Owners. The "loss payable" clause should show said Association or the designated insurance trustee as the trustee for the Owners and the

Owner's Mortgagee.

10.2 Residential Unit Insurance. The Association shall maintain a Special Forms Causes of Loss policy or policies of property insurance which shall include coverage for flood, wind and hail ("Residential Unit Property Insurance"), in an amount no less than full replacement value for the roof, foundation and structure of each Residential Unit excluding drywall, finished ceiling and floor coverings, subject to such deductible amounts as are deemed reasonable by the Board and provided such insurance is reasonably available to the Association ("Association Insured Residential Unit Property"). Such Residential Unit Property Insurance shall insure painted/finished exterior wall surfaces of the Residential Unit and gutters and downspouts located on the exterior of Residential Units. Such Residential Unit Property Insurance shall not insure, among other things, windows, screening, patio railing, hurricane shutters, recessed and perimeter wall scone lighting, wall air conditioning units of the garage level, floor coverings of the garage level patio, garage doors, and lower level patio screen doors. Such Residential Unit Property Insurance shall not apply to Condominium Residential Units and such Residential Unit Property Insurance shall not be assessed to Condominium Residential Unit Owners, unless such insurance is not obtained by a particular Condominium Association. Each Owner shall maintain a policy or policies to insure the improvements and personal property within his, her or its Residential Unit including the drywall, finished ceiling and floor coverings and everything within from all casualty losses and shall be responsible for any other insurance desired with respect to the Residential Unit. Notwithstanding anything contained herein to the contrary, the Association shall not be liable for any losses to any Residential Unit, whether the insurer, under the insurance policies maintained pursuant to this section, pays losses in whole, part, or not at all.

10.3 Reconstruction and Repair after Casualty. The Association or an Insurance Trustee authorized by the Association (i) shall assume responsibility for coordinating the Repair of Residential Units with respect to the Association Insured Residential Unit Property and (ii) may elect to assume responsibility for coordinating the Repair of Residential Units for the remainder of the Residential Units after a casualty in order to ensure the construction is consistent and satisfies the Community-Wide Standard. Such coordination shall include control over all insurance proceeds for the Residential Unit. Any Owner that may have insured any portion of the Association Insured Residential Unit Property shall assign its insurance proceeds to the Insurance Trustee. The Association or the Insurance Trustee may elect to disburse the insurance proceeds to the Owner for Repair of a Residential Unit after a casualty and supervise the construction. A member of the Board may serve as the Insurance Trustee.

10.4 Public Liability Coverage. The Association shall obtain comprehensive general liability coverage insuring the Association against any and all claims and demands made by any Person for injuries received in connection with the operation and maintenance of the Common Areas or Recreational Facilities and improvements located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have limits of not less than \$1,000,000.00 covering all claims for personal injury and

property damage arising out of a single occurrence. The liability coverage shall include protection against liability for non-owned and hired automobiles, and liability of hazards related to usage. In addition, the coverage shall include protection against liability that results from actions related to employment contracts in which the Association is a party. All such policies shall name the Association as an insured party under such policy or policies. The original of each policy shall be held by the Board or in the office of the Insurance Trustee.

10.5 Fidelity Bond Coverage. The Association shall obtain Fidelity Bonds (or insurance) covering Officers, Directors, employees and other persons who handle or are responsible for handling Association funds. The Fidelity Bonds (or insurance) shall meet the following requirements:

- (a) All such fidelity insurance or bonds shall name the Association as an obligee; and
- (b) Such fidelity insurance or bonds shall be written in the amount equal to at least 150% of three months operating expenses of the Association, and the amount in reserve as of the end of each fiscal year of the Association; and
- (c) Such fidelity insurance or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or a similar expression; and
- (d) Such insurance or bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days prior written notice of the servicer or the insured.

10.6 Flood Insurance. If any part of the Common Areas or Recreational Facilities are in a special flood hazard area, and are insurable as defined by the Federal Emergency Management Agency, the Association shall insure same. The coverage shall be the maximum coverage available for the improvements, structures, or property under the National Flood Insurance Program.

10.7 Insurer. All insurance shall be issued by a company authorized to do business in the State of Florida.

10.8 Named Insured. For all policies obtained by the Association, the named insured shall be the Association individually and as trustee for the Owners covered by the policy without naming them, and shall include Institutional Mortgagees who hold Mortgages upon Residential Units covered by the policy whether or not the Institutional Mortgagees are named therein. The Board may authorize the Insurance Trustee to maintain the policies and receive any proceeds of such policies.

10.9 Premiums. Premiums on policies purchased by the Association shall be collected as a Base Assessment from all Owners, except with respect to the Residential Unit Property Insurance maintained by the Association, which shall be collected as an Individual Assessment from all Owners receiving the benefit of such insurance. Each Owner's proportional share of the Residential Unit Property Insurance shall be determined by multiplying the total premium cost for all of the Residential Units insured by a fraction, the numerator of which shall be the number of Residential Units owned by the Owner and the denominator of which shall be the total number of Residential Units insured by the Residential Unit Property Insurance. If the amount of a premium for any type of insurance carried by the Association is increased because a Residential Unit or any appurtenance thereof is misused or abandoned, then the Owner of such Residential Unit shall be liable for the amount of such increase. The Association shall furnish evidence of premium payment to each Institutional Mortgagee upon request.

10.10 Policy Cancellation. All insurance policies purchased by the Association shall require the insurer to notify in writing the Association or the designated Insurance Trustee, if any, and each first Mortgagee named in any Mortgage clause at least ten (10) days before it cancels or substantially changes the coverage.

10.11 Association as Agent. The Association is hereby irrevocably appointed agent for each Owners and for the Mortgagee or other lienor of a Residential Unit, and for each owner of any other interest in the property, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

ARTICLE XI ARCHITECTURAL CONTROL

11.1 Architectural Control Committee. The Architectural Control Committee ("ACC") shall consist of three (3) or more persons appointed by the Board, which persons may be any combination of either Members, or non-Members who are either licensed contractors or architects. The function of the ACC is to ensure that all architectural changes and improvements are permitted by the ACC and are in compliance with the requirements set forth below. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction the decisions of the ACC.

11.2 Community-Wide Standard. The ACC shall regulate any construction, the external appearance and property improvements in such a manner as to comply with and meet the Community-Wide Standard, to best preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

11.3 General Provisions.

(a) The address of the ACC shall be the principal office of the

Association as designated by the Board. Such address shall be the place for the submittal of plans and specifications and the place where the current architectural standards, if any, shall be kept.

(b) The ACC shall establish time limitations for the completion of any architectural improvements for which approval is granted.

(c) No change, alteration or improvement shall be permitted to be made to any portion of the Common Areas or Recreational Facilities or those properties subject to a Common Area or Recreational Facility easement by any Owner without the prior written consent of the ACC, and no change, alteration or improvement shall be permitted to be made to any portion of a Residential Unit which may cause a change or alteration to the exterior of the Residential Unit, except with the prior written consent of the ACC pursuant to this Article.

(d) Plans and specifications are not approved or reviewed for (i) engineering design, and by approving such plans and specifications, neither the ACC, the members thereof, the Association, the Members, or the Board assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications, or (ii) compliance with any applicable government rules and regulations.

(e) Any application for architectural change shall be made by the applying Owner on forms prepared by the ACC (the "Application"). The completed Application together with all plans and specifications as well as any damage deposit fee shall be submitted to the ACC. The decision of the ACC shall be returned to the applying Owner.

11.4 Failure to Approve. Approval shall be deemed granted in the event that the ACC fails to approve, modify, or disapprove in writing an Application within thirty (30) days after all required plans and specifications and the Application have been submitted to it by the Owner.

11.5 Disapproval. In the event that the Application and the plans and specifications submitted to the ACC are disapproved, the party or parties making such submission may appeal in writing to the Board. The written request for an appeal must be received by the Board not more than thirty (30) days following the disapproval by the ACC. The Board shall have forty-five (45) days following receipt of the request for appeal to render its written decision. The Board may reverse or modify the ACC's decision by a majority vote of the Board. The failure of the Board to render a decision within such forty-five (45) day period shall be deemed to be a decision in favor of the appellant.

11.6 Conditions.

(a) No construction, including, without limitation, staking, clearing,

excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place until the requirements of this Article have been fully met, and until the approval of the ACC has been obtained.

(b) No construction of improvements (including without limitation, pools, saunas, spas, Jacuzzis, screened enclosures, buildings, mailboxes, dog runs, animal pens, fences, basketball poles and nets, and playground equipment of any kind whatsoever), decorations, attachments, fixtures, alterations, repairs, change of paint or stain color, pressure cleaning, or other work shall be erected, constructed, affixed, placed, or altered on any Common Area, Recreational Facility, or Common Area or Recreational Facility easement until the proposed plans, specifications, exterior colors and/or finishes, landscaping plan, and plot plan showing the proposed location of such improvements shall have been approved by the ACC, its successors or assigns. Refusal of approval of plans, locations, or specifications may be based by the ACC upon any reason, including purely aesthetic conditions, which in the sole discretion of the ACC shall be deemed sufficient. One (1) copy of all plans and specifications shall be furnished to the ACC for its records. No permission or approval shall be required to repaint in accordance with the originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing herein shall be construed to limit the right of an Owner to remodel the interior of his Residential Unit, or to paint the Interior of his Residential Unit any color desired.

(c) No additional plantings shall be permitted in the Common Areas or Recreational Facilities, or Common Area or Recreational Facility easements, except as may be approved by the Association.

(d) No clothing, laundry, or wash shall be aired or dried on any portion of the Residential Units which is exposed to the view of any other Residential Unit, or on any portion of the Common Areas, Recreational Facilities, or Common Area or Recreational Facility easements. Drying areas shall be permitted only in locations approved by the ACC, and only when protected from view by screening or fencing which is approved by the ACC.

(e) Unless specifically excepted by the ACC, all improvements, for which an approval of the ACC is required under this Declaration, shall be completed within twelve (12) months from the date of commencement of said improvements.

(f) No construction shall be commenced unless and until a returnable debris deposit of \$1,500.00 (or such other amount as may be specified by the ACC in its approval notification) has been posted by the Owner with the Association. The debris deposit shall be used to correct any damage to the

Common Areas, Recreational Facilities or Residential Units resulting from the construction activity. If no damage is done to the Common Areas, Recreational Facilities or Residential Units by the construction activity, the debris deposit shall be returned to the Owner upon completion of the improvement.

(g) No landscaping improvements shall be installed on any Residential Unit, Common Area or Recreational Facility without the prior approval of the ACC.

(h) No playground equipment including, without limitation, jungle gyms, swing sets or slides, shall be installed on any Residential Unit or Common Area without the prior approval of the ACC.

11.7 Variances. The ACC may authorize variances from compliance with any of the provisions of the current architectural standards, if any, when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate, and no variance shall be effective unless in writing and in compliance with the restrictions set forth in this Declaration, and unless such variance will not stop the Association from denying a variance in other circumstances. For purposes of this paragraph, the inability to obtain approval of any governmental agency; the issuance of any permit; or the terms of any financing shall not be considered a hardship warranting a variance.

ARTICLE XII USE RESTRICTIONS

12.1 Residential Uses. The Property shall be used only for residential, recreational, and related purposes (which may include, without limitation, all business activities affiliated with the operation of the Recreational Facilities, offices for any property manager retained by the Association, property broker or business offices for the Association).

12.2 Use Restrictions. The Board shall have the authority to make and enforce Rules and Regulations governing the use of the Property, in addition to those contained herein. Such Rules and Regulations shall be binding upon all Owners, occupants, guests and invitees until and unless overruled, canceled, or modified by the Board in its sole discretion without the consent of Owners.

(a) Signs. No sign, symbol, name, address, notice, or advertisement, of any kind whatsoever, including but not limited to signs which advertise the sale of a Residential Unit, shall be inscribed or exposed on or at any window or other part of a Residential Unit or Common Area or Recreational Facility without the prior written approval of the Board. The Board shall have

the right to erect any signs as they, in their sole discretion, deem appropriate.

(b) **Parking and Garages.** Vehicles shall be parked only in the garages or in the driveways serving the Residential Units or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the Rules and Regulations adopted by the Board. Vehicles shall not be parked overnight on Roads or swales. A maximum of two (2) vehicles may be parked overnight in a driveway. All commercial vehicles, recreational vehicles, trailers, campers, camper trailers, boats, watercraft, motorcycles and boat trailers must be parked entirely within a garage unless otherwise approved by the Board. No garage shall be used as a living area. No garage shall be altered in such a manner that the number of automobiles which maybe parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

(c) **Occupants Bound.** All provisions of the Homeowners Documents which govern the conduct of Owners, and which provide for sanctions against Owners, shall also apply to all occupants of any Residential Unit, including all Lessees, invitees, family and guests of an Owner or occupant.

(d) **Animals and Pets.** The Association reserves the right to make or modify any rules regarding pets and animals it deems desirable from time to time including, but not limited to, placing restrictions on the size and type of pets permitted or prohibiting pets from the Property entirely. However, an individual acquiring his or her Residential Unit in reliance on the ability to have a particular type of pet may continue to have that type of pet (subject to size and other reasonable restrictions) despite any subsequent prohibition of such pets. This provision may be changed only with the approval of 2/3 of the voting Members. No animals shall be raised, bred, or kept in any Residential Unit for any commercial purpose, or in numbers deemed unreasonable by the Board in its sole discretion. No animal may be kept in a Residential Unit, which in the sole judgment of the Board results in a nuisance or is obnoxious to the residents in the vicinity. No Owner shall be permitted to maintain in his or her Residential Unit a bull terrier (pit bull), or any dog or dogs of mean or of violent temperament or otherwise evidencing such temperament. Pets shall not be permitted in any of the Common Areas or Recreational Facilities, or in the yard of a Residential Unit unless under leash. Each pet owner shall be required to clean up after his or her pet. Each Owner, by acquiring a Residential Unit, agrees to indemnify the Association, and hold it harmless against any loss or liability resulting from his or her, his or her family member's, or his or her lessee's ownership of a pet. If a dog or any other animal becomes obnoxious to other Owners by barking or otherwise, the Owner shall remedy the problem, or upon written notice from the Association, he or she shall be required to

permanently remove the pet from the Residential Unit and from the Property within seven days from the receipt of notice from the Association.

(e) Nuisance. No Residential Unit shall be used, in whole or in part, for the storage of any property or thing that shall cause such Residential Unit to appear to be in an unclean or untidy condition or that shall be obnoxious to the eye; nor shall any substance, thing, or material be kept in any Residential Unit that shall emit a foul or obnoxious odor or that shall cause any noise or other condition that shall or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property or to Mariner's Club as a whole. No illegal, noxious, or offensive activity shall be carried on in any portion of the Property, nor shall anything be done thereon tending to cause a nuisance to any person using any property adjacent thereto. There shall not be maintained any plants, animals, devices, or things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. Notwithstanding anything contained in this Declaration to the contrary, it is intended (without creating any obligation) that portions of the Property may be operated as a vacation resort with short-term guests. Any and all activities in any way related to the operation of a vacation destination resort and related ancillary uses shall not be deemed a nuisance or an unauthorized commercial use under this Declaration.

(f) Unsightly Conditions. No rubbish, debris, or unsightly materials or objects of any kind shall be placed or kept within the Residential Units, Common Areas or Recreational Facilities. All refuse containers (except on scheduled trash pick-up days), all machinery and equipment, and other similar items of personal property shall be obscured from view of adjoining streets, Residential Units, Common Areas or Recreational Facilities. All Residential Units shall be kept in a clean and sanitary condition and no rubbish, refuse, or garbage shall be allowed to accumulate, or any fire hazard allowed to exist therein. In the event an Owner fails to maintain his Residential Unit as required for a period of at least thirty (30) days, the Association shall have the right, exercisable in its discretion, to clear any rubbish, refuse, or unsightly debris from any Residential Unit deemed by the Association to be a health menace, fire hazard or a detraction from the aesthetic appearance of Mariner's Club; provided, however, that at least fifteen (15) days prior notice shall be given by the Association to the Owner of such Residential Unit before such work is done by the Association. In the event the Association, after such notice, causes the subject work to be done, then, and in that event, the costs of such work, together with interest thereon at the maximum rate permitted by the law, shall be charged to the Owner and shall become a lien on the Residential Unit, which then shall be effective, have priority and be enforced pursuant to the procedures set forth in this Declaration.

(g) **Antennas.** No exterior antennas, aerials, satellite dishes, or other apparatus for the reception or transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property without the prior written approval of the ACC, which approval may be withheld in its sole discretion.

(h) **Subdivision of Residential Unit.** Residential Units shall not be further subdivided or separated by any Owner, and no portion less than all of any such Residential Unit, nor any easement shall be conveyed or transferred by an Owner; provided, however, that this shall not prevent corrective deeds, deeds to resolve boundary disputes and other similar corrective instruments.

(i) **Pools and Decks.** No pool or deck shall be installed in any Residential Unit without the prior approval of the ACC. Further, no above ground pools may be installed in any Residential Unit.

(j) **Fences.** Fences shall not be installed in any Residential Unit, other than around a Pool which has been approved by the ACC, and such Pool fencing shall be subject to the approval of the ACC.

(k) **Irrigation.** No sprinkler or irrigation systems of any type which draw water from lakes, rivers, ponds, canals, wells or other ground or surface waters within the Property shall be installed, constructed or operated by an Owner within the Property unless the prior written approval from the ACC has been obtained.

(l) **Drainage and Septic Systems.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(m) **Tree Removal.** No trees shall be removed, except for diseased or dead trees, and trees needing to be removed to promote the growth of other trees, unless approved by the ACC. In addition, no palm trees located in the pool or spa area may be removed without the approval of a majority of the eligible voting Membership; although any dead or diseased palm trees in the pool or spa area may be removed and replaced with like kind and quality.

(n) **Sight Distance.** No fence, wall, hedge, shrub, canopy, improvement or planting shall be placed or permitted to remain where it would create a traffic or sight problem.

(o) Lighting. Except for the reasonable use of seasonal decorative lights, all exterior lights must be approved by the ACC.

(p) Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculpture, fountains, flags, and similar items must be approved by the ACC.

(q) Recreational Facilities and Playgrounds. All Recreational Facilities and playgrounds within the Property, if any, shall be used at the risk of the user, and the Association shall not be held liable to any person or persons for any claim, damage, or injury occurring thereon or related to use thereof.

(r) Business Use. The Residential Units shall be used solely for residential purposes. The Residential Units may not be used in any trade, business, professional, or commercial capacity, other than as provided in subsection (e), above. Nothing contained herein shall prohibit any and all types of construction activity necessary to complete Mariner's Club, or the construction and operation of one or more sales models and an office for development, initial sales and ongoing resales and rentals. Nor shall anything herein prohibit operation of the Recreational Facilities, including, but not limited to, an administrative office, sales of fuel, marina supplies, bait and tackle and food and beverage.

(s) Windows. All draperies, curtains, shades, or other window coverings installed in a Residential Unit which are visible from the exterior of a Residential Unit shall be of a quality and shall have an appearance which is consistent with the Community-Wide Standard. The ACC shall have the right, in its sole discretion, to request the removal and replacement of a specific window covering if said Community-Wide Standard is not met.

(t) Vehicles. No trailer, boat, camper, motor home, bus, or similar vehicle shall be parked on any part of the Property, any driveway, or designated parking space within the Property except that the following shall be permitted: (1) vehicles parked within an enclosed garage, (2) commercial vehicles, vans, or trucks delivering goods or furnishing services temporarily during daylight hours, and (3) vehicles parked upon such portions of the Property as the Board, in its discretion, allow. In the event that there is a dispute concerning the type of vehicle, then the decision of a majority of the Board shall control. The Association shall have the right to authorize the towing away of any vehicles in violation of this Section with the costs and fees, including attorneys' fees, if any, to be borne by the vehicle owner or violator.

(u) Hurricane Season. Each Owner who intends to be absent from his home during the hurricane season (June 1 to November 30 of each year)

shall prepare his Residential Unit prior to his departure by doing the following:

- (i) Removing all furniture, potted plants, and other movable objects from the yard, patio and deck; and
- (ii) Designating a responsible Person, satisfactory to the Association, to care for his Residential Unit should it suffer hurricane damage. Such Person shall also contact the Association for permission to install temporary hurricane shutters, which must be removed when no longer necessary for storm protection. At no time shall hurricane shutters be permanently installed without the consent of the ACC.
- (iii) If approved by the ACC, temporary or permanent exterior shutters may only be closed during a storm event or when a storm event is imminent, and such shutters must be opened within twenty-four (24) hours after the completion of a storm event. A "storm event" is defined as a meteorological event in which winds in excess of 20 mph have occurred, or is expected to occur, within 12 hours.
- (v) Rules and Regulations. The Owners shall abide by each and every Rule and Regulation which maybe promulgated from time to time by the Board. Failure of an Owner to comply with this Subsection may result in the imposition of a fine by the Association and/or the suspension of such Owner's right to use the Common Areas or Recreational Facilities, all in accordance with the provisions relating to fines found in the Bylaws.
- (w) Energy Conservation Equipment. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating, and domestic Water Systems. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the ACC. No solar panel, vents, or other roof-mounted, mechanical equipment shall project more than 1.0 feet above the surface of the roof of a Residential Unit; and all such equipment, other than solar panels, shall be painted consistent with the color scheme of the portion of the Residential Unit to which such equipment is installed. This provision is not intended to prohibit the use of solar energy devices.
- (x) Hazardous Substances. The handling, storage, transportation and disposal of hazardous or toxic materials shall be prohibited on the Property and within the Recreational Facilities; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum products used by an Owner in the operation of his or her vessel. Each

Owner shall severally indemnify, defend and hold the Association harmless from and against any and all costs, expenses, liabilities, fines, penalties and clean-up costs incurred by the Association, resulting from an Owner's introduction of hazardous materials to the Property. If the Association is not immediately reimbursed by such owner upon demand, the Association shall levy and assess an Individual Assessment against such Owner to cover the cost incurred by the Association in correcting such damage, alteration or unlawful discharge, and shall pay over the amount thereof to the Association.

12.3 Compliance with Governmental Restrictions. The Property and each Residential Unit shall be owned and maintained in a manner so as not to violate the terms of any applicable governmental restriction, permit, development order, regulation, or ordinance. The Association shall be severally indemnified, defended and held harmless by each Owner for all losses, damages (compensatory, consequential, punitive or otherwise) or claims arising from or relating to the failure by such Owner, his or her family members, guests or lessees to comply with the terms of such governmental requirements.

ARTICLE XIII MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Residential Units in the Property. The provisions of this Article apply to the Homeowners Documents, notwithstanding any other provisions contained therein.

13.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Residential Unit number, therefore becoming an "Eligible Holder" shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period longer than sixty (60) days, and of any default in the performance by an Owner of any obligation under the Homeowners Documents which is not cured within sixty (60) days of such default;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

13.2 Restoration and Repair. To the extent possible under Florida law any restoration

or repair of the Property after a partial condemnation or damage due to an uninsurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications, as they may be modified pursuant to this Declaration and the approval of the ACC.

13.3 No Priority. No provision of the Homeowners Documents gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Residential Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas, Recreational Facilities or a Residential Unit.

13.4 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Residential Unit.

13.5 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete or amend any of their respective requirements which necessitate any of the provisions of this Declaration or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes, deletions or amendments.

13.6 Plat Amendment. Each Mortgagee (excluding FUNB) shall be obligated to take any action required to approve the replat described in Section 1.27 hereof, provided that the replatted property shall be similar to the description provided by the Site Plan.

13.7 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action requiring their consent hereunder shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days from the date of mailing the Association's request, provided such request is mailed to the Mortgagee by certified or registered mail, return receipt requested. The provisions of this Section 14.7 shall not be applicable to FUNB, Bank of America or Orion Bank, a Florida banking corporation.

ARTICLE XIV ENFORCEMENT OF DECLARATION

14.1 The enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms or to prevent violation or breach of any of the covenants or terms herein. The Association or any Owner may, but shall not be required to, seek enforcement of this Declaration. Any Owner who seeks enforcement of this Declaration shall by his actions be deemed to have indemnified the Association from all liabilities resulting from his actions. Should the party seeking enforcement be the prevailing party in any action, then the person against whom enforcement has been sought shall pay all costs and reasonable attorneys' fees at all trial and appellate levels to the prevailing party.

ARTICLE XV AMENDMENTS

15.1. This Declaration may be amended by a majority of the total eligible Membership, either by vote at a regular or special Membership meeting, or by the execution of sufficient written consents to constitute the approval of a majority of the eligible Members, so long as such written consent procedure complies with the provisions of Section 617.0701, Fla. Stat.

15.2 Effective Date of Amendments. An amendment to this Declaration shall become effective upon the recordation amongst the public records of the County.

ARTICLE XVI CONVEYANCES

In order to assure a community of congenial residents and thus protect the value of the Residential Units and other property in Mariner's Club, the sale or lease of Residential Units shall be subject to the following provisions:

16.1 Right of First Refusal. Any attempt to sell or transfer (including by gift or devise) any Residential Unit without the prior offer to and written approval of Association shall be deemed to be a breach of this Declaration, shall be wholly null and void, and shall confer no title or interest whatsoever upon any unapproved transferee.

Should a Residential Unit Owner wish to sell or transfer his Unit (including by gift or devise), such Owner (or the executor of the Owner's estate) shall deliver to the Association, by certified mail, return receipt requested or by hand delivery to the President or Secretary of the Association, a written notice containing the terms of any bona fide offer received and accepted (where applicable); the name and address of the person(s) to whom the proposed sale or transfer is to be made, a fully completed application, a fee to be set by the Board from time to time, which fee shall not exceed the maximum amount permitted by law, and all other information and documentation as may be reasonably required by the Board (the "Notice").

Within fourteen (14) days after receiving such Notice, including such supplemental information as is reasonably required by the Board, the Association shall either consent to the transaction specified in said notice, or, by written notice to be delivered to the Residential Unit Owner (or mailed to any alternate location as specified by the Owner in the Notice), designate the Association, or an alternate transferee satisfactory to the Board, willing to purchase the Residential Unit upon terms as favorable to the Owner as specified in the Owner's Notice (the "Designation").

In the event of a gift or devise, the Owner must submit an appraisal of the fair market value of the Unit with the Notice, before such Notice will be reviewed. Such appraisal must be

made by a licensed real estate appraiser. Any offer to purchase the Residential Unit pursuant to the Association's right of first refusal shall be based on the value as stated in the appraisal.

The Association or its stated designee shall have ten (10) days from the date of the Designation within which to make a binding offer to purchase the Residential Unit. Thereupon, the Owner shall either accept such offer, or withdraw and/or reject the offer specified in the Notice. The stated designee may have thirty (30) days from the approval of such transfer by the Association within which to close upon the purchase of the Residential Unit. Failure of the Association to designate a transferee or failure of such designee to make such offer within the said ten (10) day period shall be deemed consent by the Association to the transaction specified in the Notice.

The consent of the Association shall be in recordable form, signed by an Officer of the Association, and shall be delivered to the purchaser. No conveyance of title or interest whatsoever shall be valid without the consent of the Association as set forth herein.

16.2 Lease Agreement Terms. All leases for a term of less than thirty (30) days are subject to the Association's prior written approval, which approval shall not be unreasonably withheld. All rental agent(s) leasing Residential Units or marketing Residential Units for rent within the Association for a term of less than thirty-one (31) days must be approved by the Association, and shall complete such applications and provide such information deemed necessary or required by the Association prior to the granting of such approval. Any and all lease agreements between an Owner and a lessee of such Owner shall be in writing and must provide that the lessee shall be subject in all respects to the terms and provisions of this Declaration and that any failure by the lessee under such lease agreement to comply with such terms and conditions shall be a material default and breach of the lease agreement. Paragraphs 5.7 and 5.10(b) of this Declaration are required to be included in any lease of a Residential Unit. If such paragraphs are not included, whether or not the Association has approved such lease, the Owner of the leased Residential Unit shall indemnify, defend and hold harmless the Association, its Board of Directors and committees from and against any and all claims, demands, liabilities, losses or judgments made by or on behalf of such lessee or any person or entity on the Property due to such lessor's occupancy. Each lessee must be registered with the Association.

16.3 Association Requirements. Upon consummation of any transfer, it shall be the responsibility of the purchaser to furnish the Association with a recorded copy of the deed of conveyance indicating the new Owner's mailing address for all future Assessments and other correspondence from the Association; provided, however, that the purchaser shall also be required to agree to comply with the Governing Documents of the Association and to sign such other acknowledgments as may be required by the Association, as well as comply with all requirements regarding the Recreational Facilities Membership.

16.4 Delinquent Owners. Notwithstanding the above, in the event that an Owner is delinquent in paying any Assessment, or the Owner or his buyer, family, guests, agents, licensees or invitees are not in compliance with any provision of the Homeowners Documents, the Association has the right to disapprove of any sale; and in the case of a lease, the right to

disapprove of and to void any lease at any time prior to or during the leasehold tenancy until any delinquent Assessment is paid and/or until any violation of the Homeowners Documents is corrected.

ARTICLE XVII TERMINATION

17.1 Termination and Documents. If this Declaration is terminated in accordance herewith, it is hereby declared that each and every Owner by acquiring title to his Residential Unit hereby covenants and agrees, that any document terminating this Declaration shall require that (a) all Residential Units shall continue to be used solely for residential purposes, and (b) all Common Areas and Recreational Facilities shall be owned and held in equal shares by the Owners as tenants in common, and each Owner shall remain obligated to pay his pro rata share of expenses to continually maintain the Common Areas and Recreational Facilities.

17.2 Termination. Except as otherwise provided in Article XIV hereof, the Owners and their grantees, successors, and assigns by acquiring title to a Residential Unit covenant and agree that no termination of this Declaration shall be made for a period of fifty (50) years from the date of recordation of this Declaration. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property and inure to the benefit of the Association, the Owners, Institutional Mortgagees and their respective legal representatives, heirs, successors, and assigns for said period. After this fifty (50) year period, this Declaration shall be automatically renewed and extended for successive periods often (10) years each unless at least one (1) year prior to the termination of such fifty (50) year term or any such ten (10) year extension there is recorded amongst the Public Records of the County, an instrument signed by at least 67% of the voting Members of the Association. Nothing in this paragraph shall excuse the Association from complying with the provisions of Chapter 712, Fla. Stat., Marketable Record titles to Real Property.

18.3 Water Management System. In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Water Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and be approved by the Water Management District prior to such termination, dissolution or final liquidation.

ARTICLE XVIII ENVIRONMENTAL CONSERVATION AREAS

18.1 Maintenance of Environmental Conservation Areas. Portions of the Property may be designated and dedicated as Environmental Conservation Areas. All Environmental Conservation Areas and Environmental Conservation Easements shall be operated and maintained by the Association pursuant to any plan or agreement approved by the County or other appropriate governmental authority. The Association shall permit representatives of all

appropriate governmental agencies to inspect and monitor such areas upon reasonable notice. The costs of all maintenance expenses on such areas shall be assessed to the Members as a Common Expense in perpetuity.

18.2 Prohibited Activities. The following activities shall be prohibited in or on the Environmental Conservation Area:

- (a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground; provided, however, that any pier or boardwalk permitted by the appropriate governmental body shall not be prohibited;
- (b) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
- (c) Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a governmentally approved maintenance plan;
- (d) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- (e) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition, and which receive prior governmental approval;
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation; or diking; or fencing;
- (g) Acts or uses detrimental to such retention of land or water areas.

ARTICLE XIX MISCELLANEOUS

19.1 No Waiver. The failure of the Association or any Owner to object to an Owner's or another person's failure to comply with this Declaration shall in no event be deemed a waiver of any right to object to same and to seek compliance therewith in accordance with the provisions herein.

19.02 Headings. Article and paragraph captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms and provisions of this Declaration.

19.03 Pronouns. Whenever the context requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

19.04 Severability. In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect

19.05 Conflict. In the event of a conflict between the mandatory provision of applicable law, this Declaration, the Articles and the Bylaws, the provisions of applicable law, this Declaration, the Articles and the Bylaws (in that order) shall prevail.

19.06 Non-Condominium. The Association created pursuant to this Declaration and the Articles of Incorporation of the Association is expressly not intended to be a condominium association and is not created in accordance with the Florida statutes chapter 718 in existence as of the date of recording this Declaration in the public records of Monroe County, Florida.