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**FLORIDA NON-PROFIT CORPORATION**

**Fisherman's Cove of Volusia County Home Owners Assoc**

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**ARTICLES OF INCORPORATION  
OF  
FISHERMAN'S COVE OF VOLUSIA COUNTY  
HOME OWNERS ASSOCIATION, INC.  
(A Florida Not For Profit Corporation)**

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

**Article 1. Name.** The name of the Corporation shall be Fisherman's Cove of Volusia County Home Owners Association, Inc. For convenience, the Corporation shall be referred to in this Instrument as the "Association."

**Article 2. Address.** The address of the initial principal office of the Association is 2225 A1A South, Suite C-8, St. Augustine, Florida 32080, and the initial mailing address of the Association is Post Office Box 469, St. Augustine, Florida 32085.

**Article 3. Definitions.** All capitalized terms used herein which are not defined shall have the same meaning as set forth in the Fisherman's Cove of Volusia County Declaration of Covenants, Conditions, and Restrictions, recorded or to be recorded in the Official Records of Volusia County, Florida, as amended from time to time (the "Declaration").

**Article 4. Purposes.** The purposes for which the Association is organized are:

(a) to be and constitute the Association to which reference is made in the Declaration, to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the By-Laws of the Association, and as provided by law; and

(b) to provide an entity for the furtherance of the interests of the owners of real property subject to the Declaration.

**Article 5. Powers.** The powers of the Association shall include and be governed by the following provisions:

A. The Association shall have all of the powers conferred upon a not for profit corporation under Florida statutory and common law and all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws or the Declaration, including, without limitation, the power:

(i) to fix and to collect assessments and other charges to be levied against the Units;

(ii) to manage, control, operate, maintain, repair, and improve property subject to the Declaration or any other property for which the Association by rule, regulation, covenant, or contract has a right or duty to provide such services;

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(iii) to enforce covenants, conditions, or restrictions affecting any property to the extent the Association may be authorized to do so under the Declaration or By-Laws;

(iv) to engage in activities which will actively foster, promote, and advance the common interests of all owners of real property subject to the Declaration;

(v) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Association, subject to such limitations as may be set forth in the Declaration or By-Laws;

(vi) to borrow money for any purpose, subject to such limitations as may be contained in the By-Laws;

(vii) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(viii) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;

(ix) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration or the Articles of Incorporation; and

(x) to provide any and all supplemental municipal services to the real property subject to the Declaration as may be necessary or proper.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other rights and powers which may now or hereafter be permitted by law; the powers specified in each of the paragraphs of this Article 5 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph of this Article.

B. The Association shall make no distributions of income to its members, directors, or officers.

#### Article 6. Members.

A. The owners of each Tract, Lot or Unit, as those terms are defined in the Declaration, shall be a member of the Association and shall be entitled to vote in accordance

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with the terms of the Declaration, except there shall be no vote for any Unit owned by the Association or a governmental agency. The manner of the exercising voting rights shall be as set forth in the Declaration and in the By-Laws of the Association.

B. Change of membership in the Association shall be established by recording in the Official Records of Volusia County, Florida, a deed or other instrument establishing record title to real property subject to the Declaration. Upon such recordation, the owner designated by such instrument shall become a member of the Association and the membership of the prior owner shall be terminated.

C. The share of a member in the funds, liabilities and assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance of its Unit.

Article 7. Term. The Association shall be of perpetual duration.

Article 8. Directors.

A. The affairs of the Association shall be conducted, managed, and controlled by a Board of Directors. The initial Board of Directors shall consist of three directors. The number of directors may be increased in accordance with the By-Laws, but at all times shall consist of not less than three directors.

B. The names, addresses and offices of the initial members of the Board of Directors, who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

- |    |   |                      |
|----|---|----------------------|
| 1. | W. Steve Sykes<br>2225 A1A South, Suite C-8<br>St. Augustine, Florida 32080 | President, Treasurer |
| 2. | Scott Cole III<br>2225 A1A South, Suite C-8<br>St. Augustine, Florida 32080 | Vice President       |
| 3. | Robert Pan<br>2225 A1A South, Suite C-8<br>St. Augustine, Florida 32080     | Secretary            |

C. The method of election, removal, and filling of vacancies on the Board of Directors and the term of office of directors shall be as set forth in the By-Laws.

D. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its discretion, may determine.

**Article 9. By-Laws.** The By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided in the By-Laws.

**Article 10. Liability of Directors.**

A. To the fullest extent that the Florida Not For Profit Corporation Act, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of directors, no director of the Association shall be personally liable to the Association or its members for monetary damages for breach of duty of care or other duty as a director. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Association for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

B. Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a director, employee, officer, or agent of the Association. Such indemnification shall include indemnification against expenses (including, without limitation, reasonable attorneys' fees and appellate attorneys' fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by the indemnified person in connection with such action, suit, or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceedings, such person had no reasonable cause to believe his or her conduct was unlawful. Notwithstanding the foregoing, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance or malfeasance in the performance of his or her duty to the Association, unless, and then only to the extent that, the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses as such court shall deem proper. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and with a respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. Notwithstanding the foregoing, the Association need not indemnify the managing agent of the Community unless such indemnification is required to do so by the agreement between the Association and such managing agent, approved by the Board or required by law.

C. Approval. Any indemnification under paragraph (a) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification is proper under the circumstances because the person requesting indemnification has met the applicable standard of conduct set forth in paragraph (a) above. Such determination shall be made (i) by majority vote of the members of the Board who were not parties to such action, suit, or proceeding, if sufficient to constitute a quorum, or (ii) if a quorum of the Board is not obtainable, or, even if obtainable, if a quorum of disinterested

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directors so directs, in a written opinion rendered by independent legal counsel engaged by the Association, or (iii) by a majority vote of the Class "A" Members and the consent of the Class "B" Member, during the Development and Sale Period.

D. Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in any specific case upon receipt of a written agreement by or on behalf of the affected director, officer, employee, or agent to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the Association as authorized in this Article.

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

F. Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Association, including, without limitation, as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

Article 11. Dissolution. The Association may be dissolved only as provided in the By-Laws and by the laws of the State of Florida. Any dissolution shall be subject to the terms of Article 13 hereof, if applicable.

Article 12. Amendments. Amendments to these Articles of Incorporation may be proposed and adopted as provided in Chapter 617, Florida Statutes; provided, no amendment shall be effective to impair or dilute any rights of members that are governed by such Declaration. Any proposed amendment must be approved by Owners representing 2/3 of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists.

Article 13. VA/HUD. So long as there is a Class "B" membership and so long as HUD and/or VA is holding, insuring or guaranteeing any loan secured by property subject to the Declaration, the following actions shall require the prior approval of HUD and/or VA, respectively: annexation of additional property other than that described on Exhibit "B" to the Declaration, any dedication or mortgage of the Common Areas, any merger or consolidation in which the Association is a participant, dissolution of the Association, or material amendment of these Articles.

In addition, so long as there is a Class "B" membership and so long as HUD and/or VA is holding, insuring or guaranteeing any loan secured by property subject to the Declaration, upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the

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Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created, or shall be granted, conveyed and assigned to a non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

**Article 14. Interested Directors.**

(a) No contract or transaction between the Association and one or more of its directors or officers, or between the Association and any other corporation, partnership, or Association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be invalid, void, or voidable solely for such reason, or solely because the director or officer is present at or participates in the meeting of the Board at which such contract or transaction was authorized, or solely because his, her, or their votes are counted for such purpose. No director or officer of the Association shall incur liability by reason of the fact that he or she is or may be interested in any such contract or transaction.

(b) Interested directors may be counted in determining the presence of a quorum at a meeting of the Board at which a contract or transaction with an interested director is to be considered.

The Association may enter into contracts and transactions with Declarant and Declarant's Affiliates.

**Article 15. Incorporator.** The name of the incorporator of the Association is Indian River Hammock Development, LLC, a Florida Limited Liability Company, and such incorporator's mailing address is Post Office Box 469, St. Augustine, Florida 32085, with its principle address at 2225 A1A South, Suite C-8, St. Augustine, Florida 32080.

**Article 16. Registered Agent and Office.** The initial registered agent and office of the Association is 2225 A1A South, Suite C-8, St. Augustine, Florida 32080 with its mailing address as Post Office Box 469, St. Augustine, Florida 32085, and the initial registered agent at such address is W. Steve Sykes.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 28<sup>th</sup> day of June 2005.

Indian River Hammock Development, LLC

By:   
Scott Cole III, Member-Manager

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**CERTIFICATE OF DESIGNATION**  
**REGISTERED AGENT/REGISTERED OFFICE**SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Sections 607.0501 or 617.0501, Florida Statutes, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent, in the State of Florida.

1. The name of the corporation is: Fisherman's Cove of Volusia County Home Owners Association, Inc..
2. The name and address of the registered agent and office is: W. Steve Sykes, 2225 A1A South, Suite C-8, St. Augustine, Florida 32080, with its mailing address as Post Office Box 469, St. Augustine, Florida 32085.

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

By:

  
W. Steve Sykes - Registered Agent

Date:

June 28, 2005

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