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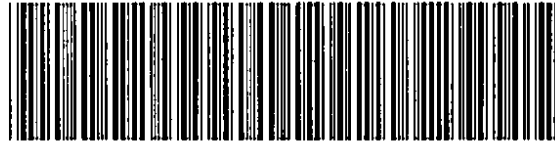
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JANUARY 10 2023

Amended + Restated

NOV 04 2022

D CUSHING

Knott · Ebelini · Hart

Attorneys At Law

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Michael E. Roeder, AICP
Director of Land Use

* Board Certified Civil Trial Lawyer
□ Board Certified Real Estate Lawyer
- Board Certified Business Litigation Lawyer

June 7, 2022

Department of State
Attn: New Filing Section
Division of Corporations
PO Box 6327
Tallahassee, FL 32314

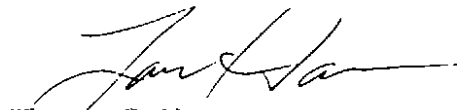
Re: *Hidden Harbor Estates Property Owners' Association, Inc.*
Doc #N15000004084

To Whom It May Concern:

Enclosed please find Amended Articles of Incorporation for the above-referenced entity along with a check in the amount of \$70.00. If you have any questions, please do not hesitate to contact us.

Sincerely,

KNOTT EBELINI HART



Thomas B. Hart
TBH/jrt

Enclosures

22 OCT 24 11:45

Knott · Ebelini · Hart

Attorneys At Law

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AKnipe@Knott-Law.com

July 20, 2022

Department of State
Attn: Diane Cushing, Senior Section Administrator
Division of Corporations
PO Box 6327
Tallahassee, FL 32314

Re: *Hidden Harbor Estates Property Owners' Association, Inc.*
Doc #N15000004084

Dear Ms. Cushing:

Pursuant to your July 5th letter, enclosed please find a copy of the Certificate of Amended & Restated Declaration of Covenants, Restrictions, & Easements of Hidden Harbor Estates Property Owners Association identifying the voting percentage and appropriate sections of the Declaration and Articles of Incorporation. The Amended Articles of Incorporation were attached the Amended and Restated Declaration as Exhibit B. This was approved on April 21, 2022.

I have also enclosed a copy of your July 5th letter and the Amended Articles of Incorporation. If you have any questions, please do not hesitate to contact us.

Sincerely,

KNOTT EBELINI HART



Jolene Tarleton, FRP
Paralegal to Asher E. Knipe, Esq.
/jrt

Enclosures

Knott · Ebelini · Hart

Attorneys At Law

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Director of Land Use

* Board Certified Civil Trial
Lawyer
□ Board Certified Real Estate
Lawyer
* Board Certified Business
Litigation Lawyer

September 20, 2022

VIA U.S. MAIL

Department of State
Attn: Diane Cushing, Senior Section Administrator
Division of Corporations
PO Box 6327
Tallahassee, FL 32314

Re: *Hidden Harbor Estates Property Owners' Association, Inc.*
Doc #N15000004084

Dear Ms. Cushing:

Pursuant to your August 19th letter, enclosed please find a copy of the Certificate of Amended & Restated Declaration of Covenants, Restrictions, & Easements of Hidden Harbor Estates Property Owners Association identifying the voting percentage and appropriate sections of the Declaration and Articles of Incorporation *with* the Amended Articles of Incorporation stating the date of approval – April 21, 2022.

I have also enclosed a copy of your August 19th letter. If you have any questions, please do not hesitate to contact us.

Sincerely,

KNOTT EBELINI HART



Jolene Tarleton, FRP
Paralegal to Thomas B. Hart, Esq.
/jrt

Enclosures

Knott · Ebelini · Hart

Attorneys At Law

George H. Knott *+
Mark A. Ebelini
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Of Counsel

Michael E. Roeder, AICP
Director of Land Use

* Board Certified Civil Trial
Lawyer
□ Board Certified Real Estate
Lawyer
+ Board Certified Business
Litigation Lawyer

October 21, 2022

VIA U.S. MAIL

Department of State
Attn: Diane Cushing, Senior Section Administrator
Division of Corporations
PO Box 6327
Tallahassee, FL 32314

Re: *Hidden Harbor Estates Property Owners' Association, Inc.*
Doc #N15000004084

Dear Ms. Cushing:

Pursuant to our conversation earlier this week, enclosed please find all governing documents and their exhibits. The documents go as follows:

1. Declaration as Exhibit A;
2. Legal Description as Exhibit A to Declaration;
3. Articles as Exhibit B;
4. Bylaws as Exhibit C;
5. South Florida Water Management Permit as Exhibit D (includes multiple exhibits reference within itself);
6. Site Plan as Exhibit E;
7. Harbor Vessel Rules as Exhibit F;

Please let me know if you have any questions.

Sincerely,

KNOTT EBELINI HART



Jolene Tarleton, FRP
Paralegal to Thomas B. Hart, Esq.
/jrt
Enclosures



FLORIDA DEPARTMENT OF STATE
Division of Corporations

RECEIVED

2022 JUL 25 PM 12:56

SECRET

July 5, 2022

THOMAS B. HART
KNOTT - EBELINI - HART
P.O. BOX 2449
FORT MYERS, FL 33902-2449

SUBJECT: HIDDEN HARBOR ESTATES PROPERTY OWNERS'
ASSOCIATION, INC.
Ref. Number: N15000004084

We have received your document for HIDDEN HARBOR ESTATES PROPERTY OWNERS' ASSOCIATION, INC. and your check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

If there are MEMBERS ENTITLED TO VOTE on a proposed amendment, the document must contain: (1) the date of adoption of the amendment by the members and (2) a statement that the number of votes cast for the amendment was sufficient for approval.

If there are NO MEMBERS OR MEMBERS ENTITLED TO VOTE on a proposed amendment, the document must contain: (1) a statement that there are no members or members entitled to vote on the amendment and (2) the date of adoption of the amendment by the board of directors.

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.

Diane Cushing
Senior Section Administrator

Letter Number: 422A00015039



FLORIDA DEPARTMENT OF STATE
Division of Corporations

August 19, 2022

THOMAS B. HART
KNOTT - EBELINI - HART
P.O. BOX 2449
FORT MYERS, FL 33902-2449

SUBJECT: HIDDEN HARBOR ESTATES PROPERTY OWNERS'
ASSOCIATION, INC.
Ref. Number: N15000004084

We have received your document for HIDDEN HARBOR ESTATES PROPERTY OWNERS' ASSOCIATION, INC. and your check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

You failed to make the correction(s) requested in our previous letter.

The Date of Adoption must be stated within the amendment and not on the cover letter. Please add the date to the document itself.

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

✓ 10/13/22

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

Diane Cushing
Senior Section Administrator

Letter Number: 222A00018562

OCT 24 2022

[REDACTED]

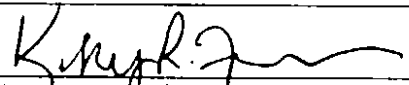

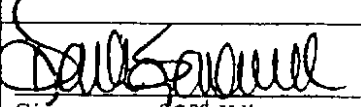
Prepared by and return to:
Thomas B. Hart, Esquire
Knott Ebelini Hart
1625 Hendry Street, Suite 301
Fort Myers, Florida 33901

2022 OCT 21 AM 11:45

**CERTIFICATE OF AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS, & EASEMENTS OF
HIDDEN HARBOR ESTATES PROPERTY OWNERS ASSOCIATION**

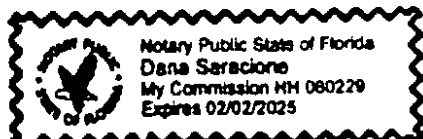
I HEREBY CERTIFY that the attached amended and restated Declaration of Covenants, Restrictions, and Easements (the "Declaration"), attached hereto as Exhibit "A", of Hidden Harbor Estates Property Owners Association (the "Association"), which includes amended and revised Articles of Incorporation of Hidden Harbor Estates Property, attached as Exhibit "B" to the Declaration, and amended and revised Bylaws of the Hidden Harbor Estates Property, attached as Exhibit "C" to the Declaration, was adopted by an affirmative vote or written consent of the Owners of Lots in Hidden Harbor Estates Property Owners Association ("Association") subdivision, representing more than fifty percent (50%) of all lots within the subdivision, all in accordance with current Article XIII of the Declaration, and current Articles IX and XII of the Association's Articles of Incorporation. The original Declaration of Covenants, Restrictions, and Easements was recorded on June 19, 2015, at Instrument #2015000133788 of the Public Records of Lee County, Florida.

IN WITNESS WHEREOF, this Certification of Amendment to the Declaration of Covenants, Restrictions, and Easements of Hidden Harbor Estates Property Owners Association, has been executed as follows:

Witness:	Hidden Harbor Estates Property Owners Assoc.
 Signature of 1 st Witness	 By:
Kelly R. Turner Printed Name of 1 st Witness	Print Name: T. G. KOLAND Title: PRESIDENT
 Signature of 2 nd Witness	Date: 01/27/2022
Dana Gracune Printed Name of 2 nd Witness	

STATE OF FLORIDA
COUNTY OF Lee

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 27th day of April, 2022, by Typhoon
President, as President of the Hidden Harbor Estates Property Owners
Association, a Florida not-for-profit corporation, on behalf of the corporation. He is ☐ personally
known to me or who has produced _____ as identification.



My Commission Expires:

Dana Seracione

Signature of Notary Public

Dana Seracione

Name typed, printed or stamped

Exhibit "A"

[Amended and Restated Declaration of Covenants, Restrictions, & Easements that include within
Amended and Revised Articles of Incorporation as Exhibit "B" and Amended and Revised
Bylaws as Exhibit "C"]

AMENDED AND RESTATED
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
HIDDEN HARBOR ESTATES

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR HIDDEN HARBOR ESTATES was made the 5th day of June, 2015, by **SD HIDDEN HARBOR, LLC**, a Florida limited liability company (hereinafter referred to as "Developer"); and

WHEREAS, Developer was the owner of the real property more particularly described on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to the "Land"); and

WHEREAS, the original DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR HIDDEN HARBOR ESTATES, made June 5, 2015, was recorded in the Public Records of Lee County, Florida on the 19th day of June at Instrument Number 2015000133788 (herein referred to as the "Declaration"); and

WHEREAS, Developer developed or caused to be developed, on said Land a planned residential neighborhood community known as "Hidden Harbor Estates" consisting of single-family lots, amenities, and certain roadways, including, but not limited to that certain access road connecting to U.S. 41, as shown on the plat of Hidden Harbor Estates, recorded as Instrument Number 2015000133775 in the Public Records of Lee County, Florida ("Plat"); and

WHEREAS, Developer provided for the presentation of the values and amenities of the Land and subjected the Land to the land use covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth; and

WHEREAS, Developer deemed it desirable for the effective preservation of the values and amenities established as aforesaid to create a corporation known as the Hidden Harbor Estates Property Owners' Association, Inc., a Florida not-for-profit corporation, hereinafter referred to as the "Association", to which there has been or will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair of the Land and improvements, the enforcement of the covenants, restrictions, easements, reservations, regulations, burdens and liens contained herein and the collection and distribution of the assessments and charges hereinafter more particularly set forth; and

WHEREAS, the parties subject to this instrument desire to join in and consent to this Amended Declaration to acknowledge their consent and joinder in the same:

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties to this instrument hereby declare that the Land shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and phrases when used in this Declaration shall have the following meanings:

1.1 **ARTICLES** means the Articles of Incorporation of Hidden Harbor Estates Property Owners' Association, Inc., a copy of which is attached hereto as Exhibit "B" and incorporated by reference.

1.2 **ASSOCIATION** means Hidden Harbor Estates Property Owners' Association, Inc., a Florida corporation not-for-profit.

1.3 **ASSOCIATION EXPENSES** means the expenses for which the Owners are or may be liable to the Association in accordance with the method of allocation thereof described in Articles VI and VII hereof and includes, but is not limited to, the following:

1.3.1 Common Area Expense which means and includes all expenses incurred or to be incurred by the Association with regard to ownership, operation, administration, maintenance and repair of the Common Areas or any part thereof, including, but not limited to, property dedicated to the Association and corresponding infrastructure, the operation, maintenance and replacement of the Surface Water Management System, and any other areas which the Association is responsible to maintain, repair and/or replace (even if title is not vested in the Association) ("Common Area Expense");

1.3.2 Lot and Dwelling Unit Expenses which means and includes those expenses incurred or to be incurred by the Association with regard to the operation, administration, maintenance and repair of Lots and Dwelling Units, but only as set forth in the provisions of this Declaration; and

1.3.3 Recreation Facilities Expense which means the maintenance, repair or replacement expenses of any and all recreational facilities that may be owned, operated or utilized by the Association or any other association which maintains, owns and operates recreational facilities for the benefit of Owners of Lots and Dwelling Units subject to this Declaration, including the Association.

1.4 **DECLARATION** means this instrument and any amendments, supplements or modifications hereto.

1.5 **BOARD** or **BOARD OF DIRECTORS** means the Board of Directors of the Association.

1.6 **BYLAWS** means the Bylaws of the Association, a copy of which are attached hereto as Exhibit "C" and incorporated herein by reference.

1.7 **COMMON AREAS** means the portions of the Land not included within the Lots nor dedicated to a party other than the Association unless the Association maintains such dedicated area pursuant to the plat or the terms hereof, and such additional Common Areas as may hereafter be declared as such. Common Areas will include the Amenity Lot (as defined in Section 2.1.2), the internal road system for Hidden Harbor Estates designated as Tract R on the Plat, that certain access road designated as

Tract R 1 on the Plat and all other rights-of-way, roads, streets, or access easements; provided such internal roadways may be dedicated and conveyed to the County, whereupon such roadways would constitute public rights-of-way. Common Areas may also include any guard house(s), fountain(s), retaining and/or boundary walls, entry features, community signage or buffer areas which serve the Land, all Protected Areas (as such term is defined in Section 5.2.1, below) and the Surface Water Management Systems that serves the Land, any recreational facilities which may be deeded to the Association and any area or property which is to be maintained by the Association even if not owned by the Association. Nothing herein shall obligate the Association to construct any recreational facilities.

1.8 **COUNTY** means Lee County, Florida.

1.9 **DEVELOPER** means SD Hidden Harbor, LLC, a Florida limited liability company, its successors and assigns; provided, however, that an Owner shall not, solely by the purchase of a Dwelling Unit, be deemed a successor or assignee of Developer or of the rights of the Developer under this Declaration unless such Owner is specifically so designated as a successor or assignee of such rights in the respective instrument of conveyance or any other instrument executed by the Developer.

1.10 **DISTRICT** shall mean and refer to the South Florida Water Management District or its successors.

1.11 **DISTRICT PERMIT** means and refers to that certain Environmental Resource Permit #36-03962-P, dated 5/30/2019, from the District, as amended from time to time, relating to the construction and development of the Land, excerpts of which are attached hereto as Exhibit "D". The Exhibits are expressly incorporated by reference, including any restrictions or requirements set forth therein.

1.12 **DWELLING UNIT** means and refers to the improvements on the Lot comprising the residence and the amenities appurtenant thereto.

1.13 **HARBOR** means and refers to the that portion of the Common Areas consisting of the internal basin of water located within Hidden Harbor Estates commonly referred to in the District Permit as the "borrow pit".

1.14 **INSTITUTIONAL MORTGAGEE** means any lending institution or real estate investment trust having a first mortgage lien upon a Lot or Dwelling Unit, including, but not limited to, any of the following institutions or entities: (i) any insurance company doing business in Florida and approved by the Commission of Insurance of the State of Florida; (ii) a Federal or State Savings and Loan Association, Building and Loan Association or bank doing business in the State of Florida and approved by the office of the Comptroller, Division of Banking of the State of Florida; (iii) a mortgage banking company licensed in the State of Florida; (iv) the Veterans Administration or the Federal Housing Administration or the Department of Housing and Urban Development or other lenders generally recognized in the community as institutional lenders; and (v) "Secondary Mortgage Market Institution" which includes the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, any other government-sponsored lending institution, and/or their respective successors or assigns, and such other secondary mortgage market institutions as the Board shall hereafter approve in writing.

1.15 **LAND** means the land more particularly described on Exhibit "A", which is committed by this Declaration to the provisions hereof and any additional real estate which may hereafter be declared to be subject to this Declaration in accordance herewith and all improvements made to such Land including Dwelling Units.

1.16 **LOT** means a portion of the Land upon which is or will be located a Dwelling Unit, the legal description of which shall be such Lot number as further described on the Plat.

1.17 **OWNER** means the Owner or Owners of the fee title to a Lot, Dwelling Unit located within the property identified as the Land.

1.18 **HIDDEN HARBOR** or **HIDDEN HARBOR ESTATES** means the residential community, which is to be developed upon the Land, and shall include all improvements now or hereafter located thereon and includes the Land and all improvements on any Land submitted to the provisions of this Declaration, and any lands added hereafter pursuant to the right to add additional lands as set forth herein.

1.19 **HIDDEN HARBOR ARB** or **ARB** means the Architectural Review Board for Hidden Harbor Estates established in accordance with Section 2.2 of this Declaration.

1.20 **HIDDEN HARBOR DOCUMENTS** means in the aggregate this Declaration and any and all Supplemental Declarations or Amendments, the Articles and the By-Laws of the Association, and the Harbor and Vessel Rules and Regulations of the Association, other Rules and Regulations adopted by the Association, the ARB Standards, any amendments thereto, and all of the instruments and documents referred to or incorporated therein or attached hereto as the same may be amended from time to time.

1.21 **SINGLE FAMILY OCCUPANCY** shall mean and refer to occupancy by a single family unit.

1.22 **SUPPLEMENAL DECLARATION** means a Supplemental Declaration of Covenants, Restrictions and Easement recorded by Developer in the Public Records of the County, submitting additional land to the terms and provisions of this Declaration or otherwise modifying this Declaration.

1.23 **SURFACE WATER MANAGEMENT SYSTEM** means any real property together with improvements thereon, including work or features such as swales, ditches, canals, impoundments, berms, ponds, harbors, lakes, retention/detention areas, wetlands, mitigation areas, conservation areas, flow ways, culverts and pumps required or described in any permits issued by the District or any other applicable governmental agency for the management and storage of surface waters, drainage and flood protection for the Land.

1.24 **TURNOVER EVENT** means an event as specified in Section 2.6 hereof.

ARTICLE II

COVENANTS AND RESTRICTIONS,

CONVEYANCE TO ASSOCIATION OF COMMON AREAS

The Developer declared and the Association hereby confirms that the Land shall be used, transferred, demised, sold, conveyed and/or occupied subject to and in accordance with the following:

2.1 LAND USE COVENANTS.

2.1.1 Lots. All Lots shall be used only for single family residential purposes as set forth in this Article II.

- 2.1.2 Common Areas. The portions of the Land not included within the Lots nor dedicated to a party (other than the Association) shall be used and conveyed solely in accordance with this Declaration. The Common Areas may include proposed recreational facilities, including, but not limited to, a community pool, an amenity building, picnic areas and other various outdoor activity areas for the common use and enjoyment of the Owners. The recreational facilities, if any, are or shall be owned by the Association, and every Owner (together with their family members and guests) shall be permitted to utilize the recreational facilities. Further, every Owner shall be obligated to pay for such usage (regardless of whether or not actually used) pursuant to this Declaration. In addition to the easements contained herein, Developer reserves unto its successors and assigns the right to unilaterally grant over, across and through the Land any non-exclusive easements which may be required for the use, operation and enjoyment of the recreational facilities. The Association shall have the right to provide from time-to-time Rules and Regulations governing the use and operation of the recreational facilities.
- 2.1.3 Land Use. Except for the road right-of-way, if any, and other improvements located within Exhibit "A", the Common areas shall be grassed and planted and kept grassed or planted as green open space, or planted with such other form of ground cover or landscaping as the ARB, or the Board of Directors considers consistent with the plan for development for beautification of Hidden Harbor Estates.
- 2.1.4 Private Use. The Common Areas hereinafter described are not for the use and enjoyment of the public, but are expressly reserved for the private use and enjoyment of the Association, Owners and their tenants and their family members, guests and invitees in accordance with this Declaration.

2.2 RESTRICTIONS ON OCCUPANCY AND USE OF THE LAND. In consideration of the benefits hereinafter contained and the payment of the Association Expenses referred to herein, the Developer declared and the Association hereby confirms that the Land, including but not limited to the Lots and Dwelling Units, shall at all times be used, constructed, occupied and held subject to the following:

- 2.2.1 Plans and Specifications and Architectural Review Board. For the purposes of ensuring the development of Hidden Harbor Estates as an area of high standards, an architectural review board ("Hidden Harbor ARB" or "ARB") may be established in accordance with the terms below.
- (A) Hidden Harbor ARB. Initially, the ARB consisted of at least three (3) persons designated by Developer. At this time, as Developer no longer owns any property within Hidden Harbor Estates, Developer has assigned to the Association, Developer's rights, powers, duties and obligations as to the ARB, whereupon the Board of Directors of the Association shall appoint the members of the ARB. In the event of the death or resignation of any member of the ARB, the Board shall have the full authority to designate a successor. Neither the members of the ARB nor its designated representative shall be entitled to any compensation for any services pursuant to this Declaration; however, the Board may

engage and compensate professionals, such as architects and engineers, to assist the ARB in performing its functions.

- (B) Hidden Harbor ARB Action. Approval or disapproval by a majority of the members of the ARB shall constitute the official approval or disapproval of the ARB.
- (C) Requirement of Hidden Harbor ARB Approval. No improvement, exterior change or structure of any kind, including without limitation, any building, gazebo, wall, fence, pond, fountain, shutters, swimming pool, screened enclosure, wooden deck, boat dock, lift, davit, additional landscaping, tree or mangrove trimming or removal, or change in paint colors or roof colors shall be erected, placed or maintained and no addition, alteration, modification, removal or change to any such improvement, landscaping or structure shall be made without the prior written approval of the ARB.
- (D) Method of Obtaining Architectural Review Board Approval. In order to obtain the approval of the ARB, a complete set of plans and specifications for proposed construction, alterations, additions and any and all other reasonably requested information and materials related thereto ("Plans") shall be submitted to the ARB for its review. The Plans shall include, but not necessarily be limited to, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, landscaping plans, approximate costs and nature, type and color of materials to be used. The Lot grading plan shall be in conformance with the approved construction plans for Hidden Harbor Estates. The ARB may also require the submission of additional information and materials as may be reasonably necessary for the ARB to evaluate the proposed construction or alteration. The ARB shall evaluate all Plans utilizing standards of the highest level as to the aesthetic quality and materials and workmanship to be used and as to suitability and harmony of location, structure and external design in relation to surrounding topography and structures. Any improvements on the Lots described on Exhibit "A" that are existing on the date of recordation of this Declaration ("Existing Improvements") shall be exempted from the approval required hereby, but any modification, alteration, or replacement of Existing Improvements shall be subject to the provisions hereof if such Lot is within the Land. All work shall be properly permitted and performed by properly licensed contractors or homeowners as allowed by the County and verification of this request shall solely be the responsibility of the Owner. The Owner shall further hold the Association and ARB harmless for any claims or damages arising from action of the Owner, of the Owner's agents, contractors or employees of same.
- (E) Approval or Disapproval by the Architectural Review Board. The ARB shall have the right to refuse to approve any Plans which, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the ARB shall be in writing and shall be sent to the Owner. In the event the ARB fails to approve or to disapprove in writing any proposed Plans within thirty (30) days after their complete

submission to the ARB, except in the event of a government declared State of Emergency, then said Plans shall be deemed to have been non-direct approved by the ARB.

- (F) Indemnification. Each and every member of the ARB, shall be indemnified by the Association and the Owners against all costs, expenses and liabilities, including counsel fees at all trial and appellate levels, reasonably incurred or imposed upon him or her in connection with any proceeding, litigation or settlement in which he or she becomes involved by reason of being or having been a member of the ARB. The foregoing provisions for indemnification shall apply whether or not he or she is a member of the ARB at the time such expenses are incurred. Notwithstanding the above, in instances where a member of the ARB admits to or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of this Declaration shall not apply; otherwise the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a member of the ARB may be entitled whether by statute or common law.
- (G) Enforcement. There is specifically reserved unto Hidden Harbor ARB the right of entry and inspection upon any Lot or other portion of the Land for the purpose of determining by the ARB whether there exists any construction of any improvements which violates the terms of any approval by the ARB, or the terms of this Declaration or of any other covenants, conditions and restrictions to which this deed or other instrument of conveyance make reference. Nothing herein shall grant to the ARB the right of entry into any improvement upon the Land. This ARB is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party in such litigation shall be entitled to recover all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold harmless the ARB from all costs, expenses and liabilities, including attorneys' fees incurred by virtue of any member of the ARB's service as a member of the ARB.
- (H) Development Standards. Hidden Harbor ARB is empowered, subject to Board approval, to publish or modify from time to time, design and development standards ("Standards") for Hidden Harbor Estates, including, but not necessarily limited to, standards for the following:
 - (i) architectural design of improvements;
 - (ii) fences, walls and similar structures;
 - (iii) exterior building materials and colors;
 - (iv) exterior landscaping;
 - (v) exterior appurtenances relating to utility installation;
 - (vi) signs and graphics, mailboxes and exterior lighting;
 - (vii) building setbacks, pools and pool decks, side yards and related height bulk and design criteria;
 - (viii) pedestrian and bicycle ways, sidewalks and pathways;
 - (ix) all buildings, landscaping and improvements on land owned or controlled by the Association;
 - (x) exterior colors and materials;

(xi) storm shutters; and (xii) boat docks, lifts and davits. The Standards shall be reasonable and in conformance with the plan of development of Hidden Harbor Estates. A copy of any Standards promulgated and any modification or amendment thereof shall be available to owners and mortgagees.

- (I) Scope of Review. Hidden Harbor ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of the aesthetic consideration and overall benefit or detriment which would result to the immediate vicinity and to the Land as a whole. The ARB shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes. Such approval is limited solely to aesthetics.
- (J) Variance from Standards. Hidden Harbor ARB may grant, subject to Board review and final approval, in a reasonable manner so as not to destroy the general scheme or plans of the development of Hidden Harbor, variances from compliance with the Standards, as the same may be modified or amended by Hidden Harbor ARB from time to time, when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted by Hidden Harbor Board, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof or standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing and executed by a member of the Board. Site drainage may not be altered. The Owner is further responsible for meeting all federal, state and local codes or other regulatory requirements.

2.2.2 Other Provisions as to Use of the Land. The following occupancy and use restrictions shall apply to each Owner and such Owner's lessees and family members, guests and invitees:

- (A) Residential Use. All Lots shall be used only for Single Family Occupancy. No business may be conducted on any Lot nor shall any building or portion thereof be used or maintained as a professional office.
- (B) Completion of Construction Remedies. If, for any reason, work is discontinued and there is not substantial progress toward completion continuously for a one (1) month period (except as caused by force majeure), then the Board of Directors shall have the right to notify the Owner of record of the Lot of its intentions herein, invade the premises and take such steps as might be required to correct an undesirable

appearance, specifically including the right to demolish a partially completed structure and remove the debris from the Lot. The reason for such correction shall be solely at the discretion of the Board of Directors and may include, but not be limited to, purely aesthetic grounds. The Owners shall be liable for all costs incurred in any such action and the total cost thereof will be a lien on the Owner's Lot, which lien may be foreclosed in the manner provided for in Article VIII hereof. The Association may also take action to force completion and to take down partially completed improvements through court order or otherwise and charge the Owner for same.

- (C) Fences, Walls and Hedges. The establishment and placement of all fences, walls or hedges and/or aesthetic plantings creating a barrier or screen shall require the prior written approval of the ARB which may set guidelines for the placement thereof. The Board may elect to restrict or prohibit fencing, and Owners shall be responsible for any increased costs for landscaping and lawn maintenance inside any fencing, if approved by the ARB.
- (D) Boundary Walls. The Association may, but in no manner be obligated to (unless required by a governmental issued permit or as a condition of a governmental approval), construct a wall, fence, hedge or other improvements along the perimeter or certain boundaries of the Land (which shall be deemed to include adjacent areas contained on a Lot) ("Boundary Wall"). The Association shall maintain, repair, replace and insure (to the extent insurable), at its expense, all Boundary Walls, which are/were constructed by it or by Developer within Hidden Harbor Estates. Notwithstanding any provision herein to the contrary, no Owner shall be permitted to undertake any activities on or pertaining to any Boundary Wall that is or may be located on a Lot, it being the intent of the Association that the Association be the sole party responsible for any and all activities involving the Boundary Wall. The Owner of any Lot in Hidden Harbor Estates, by accepting a deed to such Lot, grants the Association an easement, over their respective Lot, to construct, maintain, repair and replace any Boundary Wall within Hidden Harbor Estates.
- (E) Retaining Walls. The retaining walls located along the perimeter or rear boundaries of all or a portion of those Lots adjacent to the Harbor ("Retaining Wall") shall constitute a Common Area. The Association shall maintain, repair, replace and insure (to the extent insurable), at its expense, the Retaining Wall, which is/was constructed by it or by Developer within Hidden Harbor Estates. Notwithstanding any provision herein to the contrary, no Owner shall be permitted to undertake any activities on or pertaining to any Retaining Wall that is or may be located on a Lot, it being the intent of Developer and the Association that the Association be the sole party responsible for any and all activities involving the Retaining Wall. The Owner of any Lot in Hidden Harbor Estates, by accepting a deed to such Lot, grants the Association an easement, over their respective Lot, to construct, maintain, repair and replace any Retaining Wall within Hidden Harbor Estates.

- (F) Garages. Operable doors shall be maintained for all garages.
- (G) Parking. Parking at individual residences, other than in enclosed garages, either on a Lot or an adjoining right-of-way shall be limited to residents, guests and authorized service vehicles. Residents' vehicles should be garaged at all times. Notwithstanding the foregoing, residents may park operable, currently validly licensed, noncommercial private passenger vehicles on the driveway of their residence, not to include commercial vehicles or equipment, mobile homes, recreational vehicles, boats or other watercraft, trailers, stored or covered vehicles or inoperable vehicles. Except during construction of a single family residence, there shall be no parking on any unpaved area within Hidden Harbor Estates and the Owner of any Lot in Hidden Harbor Estates, by accepting a deed to such Lot, grants the Association an easement to remove any car parked on an unpaved area within Hidden Harbor Estates. Residents and guests may also park at the Clubhouse and gravel lot, but only in accord with the adopted Rules for those areas.
- (H) Garbage. During construction of a Dwelling Unit or other improvement, each Lot shall be maintained in a clean condition. Once construction is completed, all Owners shall be required to have mandatory trash pick-up.
- (I) Utilities. Pumping station control panels located on any Lot shall be landscaped at the Association's expense to reduce the aesthetic impact thereof, while, at the same time, not impeding the use thereof by maintenance personnel. Any landscaping installed by the Developer shall be maintained as installed and after the Turnover Event may be altered only with approval of the ARB or Board.
- (J) Landscaping. The landscape design for any Lot shall promote and preserve the appearance, character and value of the surrounding areas. Upon development of any Lot, underground landscape irrigation systems which are designed to irrigate the entire landscape portion, including the right-of-way adjacent to any portion of the Lot, shall be installed. No Owner shall remove, modify, alter or otherwise add to the existing landscaping without the prior written approval of the ARB or Board. Once landscaping and irrigation systems are installed, they shall be maintained by the Association at the Owner's expense, including right-of-way areas. Where applicable, the Owner shall supply the Association with access to the power source for irrigation systems.
- (K) Sidewalks. If applicable, it shall be the Owner's responsibility to repair and replace any damage occurring to any sidewalks as a result of any construction on the Owner's Lot.
- (L) Mailboxes. All mailboxes shall be constructed of uniform style, design and color as determined by the Association. No deviation from this requirement shall be permitted.

- (M) Nuisance. No noxious or offensive activity shall be carried on or upon the above-described property or any part, portion or tract thereof, nor shall anything be done thereon which may be or may become a nuisance or annoyance to other Owners or persons lawfully residing or present within Hidden Harbor Estates.
- (N) Outside Storage. Except with respect to Association property on the Amenity Lot, no outside storage or outbuilding of any kind will be permitted. Temporary construction trailers during the actual construction of any Dwelling Unit shall be permitted. There shall be no outside storage or permanent placement of recreational vehicles, over-sized vehicles (defined as any vehicle that is too tall, long or wide to be kept in the garage, or equipment of any kind including motor homes, campers, motorcycles, boats, canoes, kayaks, wave runners, jet skis, wind surfers, volleyball nets, basketball goals, swing sets, lawn care equipment, motorized scooters, toys or play equipment. Storage or permanent placement shall exist if a listed item or listed vehicle remains outside for a period of more than twenty-four (24) consecutive hours. Notwithstanding any provision herein to the contrary, storage of canoes, kayaks, or wind surfers on, in or about an Owner's lanai or dock will be permitted.
- (O) Roofs. Roofs shall be constructed of cement tile and their style and color shall be in conformance with the community. In the event that some new, attractive material for roofing surfaces is discovered or invented, the ARB may allow its use. Flat decks may be incorporated into a Dwelling Unit upon approval of the ARB, on an individual basis.
- (P) Signage. No sign shall be placed on or allowed to be placed on or adjacent to a Lot or improvements by an Owner without the prior written approval of the ARB.
- (Q) Irrigation and Sprinklers. All Lots, and any unpaved street rights-of-way adjacent thereto, shall contain adequate automatic electric irrigation systems, installed by the Developer, as described in subparagraph (I) above. The Owner of any Lot, by accepting a deed to a Lot in Hidden Harbor Estates, grants an easement to the Association to enter upon the Lot for the purposes of watering the lawn and landscaping if necessary. Each Owner covenants that he/she shall at all times maintain the exterior portions of such Owner's Lot and any residence thereon in a neat, aesthetically pleasing and proper condition. A blanket easement is granted to the Association and its irrigation provider over the Land for the purpose of ingress and egress and designing, studying, mapping, engineering, constructing, maintaining, operating and servicing any irrigation system, provided the exercise of this easement shall not unreasonably interfere with landscaping and improvements on the Land. All Owners acknowledge that irrigation water may be potable water, re-use water, surface water, well water, or water withdrawn from water bodies on or adjacent to the Land, which surface or Harbor water may be recharged from underground wells. The fees due for the provision of irrigation water shall be billed, at the discretion of the Association as part

of the Association Expenses, as a Specific Assessment, or as otherwise determined by the Board of Directors.

- (R) Swimming Pools/Screen Enclosures. Swimming pools, hot tubs and screen enclosures shall comply with the Standards set forth by the ARB and any installation, construction, modification or alteration of the same shall be subject to ARB approval. Access to any swimming pool and/or hot tub shall be controlled from all directions by fencing, screen enclosures and/or the Dwelling Unit. No above-ground pools shall be erected, constructed or installed on any Lot. Swimming pools shall be constructed of concrete or concrete-type materials. Swimming pools constructed of fiberglass are prohibited. All screen enclosures shall be constructed of black or bronze, or black or bronze painted, structural materials, and shall be subject to the review and approval of the ARB.
- (S) Exterior Lamp Posts. There shall be no exterior lighting lamp posts unless such exterior fixture is approved by the ARB, on an individual basis.
- (T) Firearms. The discharge of firearms is prohibited.
- (U) Antennas and Solar Water Panels. No antennas, satellite dishes, solar water panels, aerials or other appurtenant structures are allowed, without the approval of the ARB, which approval may be withheld in the exercise of the ARB's sole discretion, except as otherwise required by law.
- (V) Storm Precautions. Although the Association is not required to promulgate storm precautions, each Owner shall be required to conform with any storm precautions promulgated by the Association.
- (W) Time Shares. No time shares program shall be permitted on any Lot.
- (X) Protected Areas. No person or persons whomsoever shall be permitted upon the Protected Areas, except:
 - (i) The Owner, from time to time of said Adjacent Lot, his family, guests and invitees, subject to applicable rules, requirements, laws and ordinances;
 - (ii) An employee or contractor of the Association for the sole and exclusive purpose of performing maintenance upon and within the Harbor; and
 - (iii) No vessels shall be used upon any portion of the Land which is designated for water retention unless the Association specifically approves said usage. The administration, management, operation and maintenance of the water retention areas and drainage system shall be the responsibility of the Association. The Association shall not waive or amend the foregoing maintenance obligation without the prior written consent of the District. The

cost of administering, operating, maintaining, repairing, replacing and reconstructing the water retention areas and drainage system and improvement shall be the responsibility of the Association.

- (Y) Boat Docks. No docks, bulkheads, moorings, pilings, or boat shelters of any kind shall be erected on or over any part of the Harbor, except such as shall be constructed with both Association and applicable governmental approval. Docks must be constructed with each Lot's boundaries. Only the Owners of Lots 1 through 52 of Hidden Harbor Estates, as depicted on the Site Plan attached hereto as Exhibit "E", shall be eligible to construct a single-facility boat dock on their Lot ("Dock Eligible Lots"). In addition, the Association may construct a dock, clubhouse area or other recreational facilities on Tract E and/or Tract B (the "Amenity Lot"). The Association shall maintain, repair, replace and insure (to the extent insurable), at its expense, all improvements on the Amenity Lot. The Developer has or the Association shall be responsible for applying for and obtaining the necessary permits and paying the applicable governmental fees to construct a boat dock on the Dock Eligible Lots. The Owner of each Dock Eligible Lot shall also be responsible for maintaining, repairing, replacing and insuring the dock and any related facilities appurtenant to their Lot. The Vessel and Harbor Rules and Restrictions set forth on Exhibit "F" attached hereto and incorporated herein are established with respect to, inter alia, the construction of boat docks and slips.
- (Z) Vessel and Harbor Use. The Vessel and Harbor Rules and Restrictions set forth on Exhibit "F" attached hereto and incorporated herein are established with respect to, inter alia, the use of the Harbor, permitted vessel type, size and horsepower, and vessel operations.

2.2.3 Reconstruction. Any repair, rebuilding or reconstruction of damaged Dwelling Units shall be substantially in accordance with the architectural plans and specifications for: (i) the originally constructed Dwelling Unit; (ii) a previously reconstructed Dwelling Unit; or (iii) new plans and specifications approved by the ARB and Association.

2.2.4 Owner Liability. An Owner shall be liable for the expense of any maintenance, repair or replacement of any real or personal property in Hidden Harbor Estates rendered necessary by such Owner's act, neglect or carelessness, or by that of any member of such Owner's family, or such Owner's guests, employees, invitees, agents or lessees, but only to the extent that such expense is not covered by the proceeds of insurance which may be carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Dwelling Unit or the Common Areas. An Owner shall also be liable for any personal injuries caused by such Owner's negligent acts or those of any member of such Owner's family, or such Owner's guests, employees, invitees, agents or lessees. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

- 2.2.5 Rules and Regulations. Each Owner shall be subject to such Rules and Regulations with respect to Hidden Harbor Estates as the Association determines from time to time to be in the best interest of Hidden Harbor Estates and the Owners, provided that no Rules and Regulations promulgated by the Association shall conflict with the provisions of the Declaration. Rules and Regulations promulgated by the Association that are more restrictive than the Declaration shall be deemed to conflict with the Declaration.
- 2.2.6 Garage Conversion Prohibited. Because of the importance of keeping vehicles within garaged areas, no Owner may convert any garage area for any other use.
- 2.2.7 Pets. No more than two (2) normal household pets shall be permitted, subject to rules and regulations established by the Association. No other animals shall be permitted upon the Lot. All pets shall be under the pet owner's control at all times.
- 2.2.8 Minimum Dwelling Unit Size. No Dwelling Unit shall contain less than one thousand eight hundred (1,800) square feet of air conditioned enclosed living area. The method of determining the square footage of the enclosed living areas of a Dwelling Unit, structure or addition thereto, shall be to multiply together the horizontal dimensions of the walls forming the outer boundaries of the Dwelling Unit, structure or addition for each floor level. Open porches, atriums, screened in patios, courtyards, garages, and other similar type space shall not be taken into account in calculating the minimum air-conditioned enclosed living area square footage as required herein.
- 2.2.9 Setbacks. All setbacks for all Dwelling Units shall comply with applicable governmental zoning ordinances and resolutions, as amended from time to time, and nothing contained herein shall be deemed more restrictive than such applicable governmental zoning ordinances and/or resolutions, as amended.
- 2.2.10 Leasing. An Owner may not lease such Owner's Dwelling Unit without prior Association approval, subject to the following restrictions and conditions:
- (A) The lease must be written, and a fully executed copy must be provided to the Association for approval not less than ten (10) days before the beginning of the lease term, together with such other information about the tenants as the Board of Directors may reasonably require. A reasonable application fee to be established by the Board, payable to Hidden Harbor Estates Property Owners Association, must accompany each application submission.
 - (i) After the required notice and all information requested has been provided, the Board of Directors shall have ten (10) days in which to approve or disapprove the proposed lease. If the Board of Directors neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board of Directors shall issue a written letter of approval to the Owner.

- (ii) A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. The Association shall neither have a duty to provide an alternate tenant nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:
 - a. The Owner is delinquent in the payment of Assessments, charges, or fines, or non-compliant with any of the Declarations, Articles, Bylaws, Rules and Regulations at the time the application is considered.
 - b. The Owner has a history of leasing his/her Dwelling Unit without obtaining approval or leasing to troublesome tenants and/or refusing to control or accept responsibility for the occupancy of his/her Dwelling Unit.
 - c. The application, on its face, indicates that the person seeking approval intends to conduct himself/herself in a manner inconsistent with the covenants and restrictions applicable to the Association.
 - d. The prospective tenant has been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude.
 - e. The tenant, during previous occupancy, has evidenced an attitude of disregard for the Association rules.
 - f. The Owner fails to give proper notice to the Board of Directors of his/her intention to lease his/her Dwelling Unit.
 - g. The prospective tenant evidences a strong probability of financial irresponsibility.
- (B) No Dwelling Unit may be leased or rented for a term of less than six (6) months. Further, no Dwelling Unit may be leased more than two (2) times in any twelve (12) month period. For purposes of this restriction, the first day of occupancy under the lease shall conclusively determine in which year the lease occurs. No dwelling unit may be used on a "time-share" basis.
- (C) To prevent overuse of the Common Areas, every lease of a Dwelling Unit shall contain an implied assignment of the Owner's right to use the Common Areas during the lease term, i.e. Owner waives all rights of his use to the Common Areas during the lease term.

- (D) The boat dock appurtenant to any waterfront Lot may not be leased except in conjunction with the leasing of the Dwelling Unit.
- (E) No subleasing or assignment of lease rights is allowed. All of the provisions of the Hidden Harbor Estates documents and the then applicable and approved Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Dwelling Unit as a lessee or guest to the same extent as against an Owner, and a covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Hidden Harbor Estates documents, designating the Association as the Owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. To the extent the Association exercises its right to terminate any lease and/or evict the tenant pursuant to this Section, the Owner of such Lot shall be responsible for the attorneys' fees and costs incurred by the Association, which fees and costs shall be a Specific Assessment against the Lot pursuant to Section 7.6, below.

THE ASSOCIATION MAKES NO REPRESENTATION OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING OR THE INCOME TO BE DERIVED THEREFROM; ANY OWNER WHO DESIRES OR INTENDS TO RENT A DWELLING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT ITS OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGES OF OWNERSHIP.

- 2.2.11 District Permit. Excerpts of the District Permit issued by the District for the Land are attached hereto as Exhibit "D" and incorporated herein by reference. The Association shall maintain a complete copy of the District Permit and records of all future actions, modifications, or amendments to the District Permit. Each Owner shall be subject to the Urban Stormwater Management Program which has been approved by the District as part of the District Permit. The Association may adopt Rules and Regulations as it determines from time to time to be in the best interest of Hidden Harbor Estates and the Owner to implement or enforce the Urban Stormwater Management Program. Further, any construction activities on the Land shall be conducted in accordance with the Construction Pollution Prevention Plan which has been approved by the District as part of the District Permit. For purposes of this subsection only, the term construction is defined by Construction Pollution Prevention Plan to mean site clearing, excavation, construction of roadways, construction of utility infrastructure, and multi-use vertical construction.

2.3 **NON-SEVERABLE INTEREST OF OWNERS.** The ownership of a Lot, the Dwelling Unit constructed thereon, all easement rights appurtenant thereto as provided in this Declaration or any Supplemental Declaration including, but not necessarily limited to, utility and governmental

services easements, easements for encroachments and maintenance, and structural cross easements with respect to common structural easements; membership in the Association; and all other appurtenances thereto under the Hidden Harbor Estates documents (hereinafter collectively referred to as the "Interests"); shall not be severable and an Owner shall not and may not sell, convey, demise, lease, assign, pledge or otherwise transfer or encumber any right, title or interest in and to the respective Interests or any of such Interests unless such sale, conveyance, demise, lease, assignment, pledge or other form of transfer or encumbrance includes all of the right, title and interest in and to the Interests including, but not limited to, the Dwelling Unit and the Lot upon which it is constructed.

2.4 **DISPUTES AS TO USE.** In the event there is any dispute as to whether the use of the Land or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Association's Board of Directors, and a determination rendered by the Board of Directors with respect to such dispute shall be final and binding on all parties concerned therewith.

2.5 **CONVEYANCE TO ASSOCIATION.** Transfer of control of the Association from Developer to the members of the Association has occurred. The Association shall have the right and power to convey Association property and/or easements therein to any grantee for consideration or for no consideration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; BOARD OF DIRECTORS

3.1 **MEMBERSHIP AND VOTING RIGHTS.** Membership in the Association shall be established and terminated as set forth in the Articles and Bylaws. All homeowners, Lot Owners, property Owners or Unit Owners shall be a member in the Association and entitled to the benefit of and are subject to, the provisions of the Hidden Harbor Estates documents as same may be amended from time to time. The voting rights of the members shall be as set forth in the Articles and Bylaws.

3.2 **BOARD OF DIRECTORS.** The Association shall be governed by the Board of Directors which shall be appointed, designated or elected, as the case may be, as set forth in the Articles and Bylaws.

3.3 **INITIATION OF LEGAL ACTION.** Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of a majority in interest of the Owners of all Lots or Dwelling Units within the Land (at a duly called meeting of the Association at which a quorum is present) prior to commencing any legal proceedings, other than for the following purposes:

- 3.3.1 The collection of assessments and "Maintenance Fees";
- 3.3.2 The collection of other charges which Owners are obligated to pay pursuant to the Hidden Harbor Estates documents;
- 3.3.3 The enforcement of the use and occupancy restrictions contained in the Hidden Harbor Estates documents; or
- 3.3.4 In an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Land or to Owner(s).

Notwithstanding the foregoing, no action otherwise authorized pursuant to subsections 3.3.1-3.3.4 above shall be commenced that involve amounts in controversy in excess of \$100,000.00, without the prior approval of a majority in interest of the Owners of all Lots or Dwelling Units at a duly called meeting of the Association at which a quorum is present.

ARTICLE IV
USE AND MAINTENANCE OF THE LAND AND
MAINTENANCE OF COMMON AREAS

4.1 COVENANTS FOR USE.

4.1.1 Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within Hidden Harbor Estates, whether or not it shall be so expressed in such deed or instrument, covenants and agrees that the Dwelling Unit and the Lot shall be used, held, maintained and conveyed solely in accordance with the covenants, reservations, easements, restrictions and lien rights regarding same as are or may be set forth in the Hidden Harbor Estates documents including, but not limited to, this Declaration and all applicable Supplemental Declarations.

4.1.2 No Owner shall in any way damage, injure or impair the Common areas.

4.2 MAINTENANCE AND REPAIR OF LAND. The maintenance and repair of the Land is either the responsibility of the Owners or the Association as hereinafter more particularly set forth:

4.2.1 Responsibility of Owners.

- (A) Except as set forth in Section 4.2.2 regarding landscape Lot maintenance to be completed by the Association, each Owner shall maintain in good condition and repair at such Owner's own expense:
- (i) All portions of the Lot and Dwelling Unit. This obligation includes, but is not necessarily limited to, the obligation to paint and maintain the exterior portions of an Owner's Dwelling Unit, including, but not limited to, roof cleaning, painting and repairs. However, before painting the exterior of a Dwelling Unit, the Owner must obtain ARB approval.
 - (ii) Any swimming pool, spa and related equipment located on an Owner's Lot.
 - (iii) Any boat dock, lift and/or davit appurtenant to an Owner's Lot.
 - (iv) Any approved fences or walls located on each Lot, including, but not limited to, swimming pool safety fences.
 - (v) All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon or under the Lot and which service only the Dwelling Unit.

- (vi) All glass and screens in windows and doors, in a manner consistent and in uniformity with the standards promulgated by the Association. Any window, screen or door treatment visible from the exterior must be approved by the Association. No solar or reflective materials may be used on or as window treatments or covers.

Each owner shall perform promptly all such maintenance and repairs and shall be liable for any damages that arise due to such Owner's failure to perform such maintenance and repairs. Furthermore, should the Owner neglect to perform such maintenance and repair, the Association shall have the right to have maintenance performed by its agents or employees and the Owner in question shall be liable to the Association for the cost and expense so incurred and shall be subject to a Specific Assessment therefor.

- (B) Each Owner shall promptly report to the Association any defect known to such Owner which requires repair of the property for which the Association or a party other than that Owner is responsible.
- (C) Any repairs, alterations, improvements or maintenance must be completed by an Owner within ninety (90) days of commencement by an Owner.

4.2.2 Landscaping. In order to provide a means by which landscape maintenance of Lots may be fulfilled without jeopardizing the security of Hidden Harbor Estates by the possibility of admission thereto of a large number of landscaping maintenance contractors and their agents and employees, the Association has the power, authority and responsibility for the maintenance and operation of landscaping, and in particular lawn care of each and every Lot within Hidden Harbor Estates and such maintenance shall be part of the Association Expenses paid for by the Owners. This shall also include fertilization and insect and disease treatment. Owners with additional landscaping shall be charged an extra maintenance assessment as determined by the Association at the Association's sole discretion to cover the cost of maintaining any additional landscaping. Such maintenance shall not extend to areas requiring unusual maintenance such as rose gardens or areas specifically designated by the Association (i.e., fenced-in yards) as an "Area of High Maintenance". Areas of High Maintenance shall be maintained by the Owner of the Lot or by such special arrangement as may be approved by the Association. In the event the Owner makes special arrangements to have the Association perform maintenance on the Owner's Areas of High Maintenance, the cost of said maintenance shall be billed to the Owner as a "Specific Assessment", for which the Owner shall be solely liable and for the payment of which the Association shall have a lien against the Owner's Dwelling Unit. Nothing herein shall be deemed to grant the right to any Owner to create an Area of High Maintenance or otherwise remove, modify, alter, or add any landscaping without the prior written approval of the ARB or Association.

- 4.2.3 Replacement. The Association shall not be responsible for replacement of any landscaping, even if replacement is due to negligence of the Association, its agents, employees or any other party. Owners shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.
- 4.2.4 Maintenance and Repair of Common Areas. Maintenance and repair of common Areas and any improvements located hereon is the responsibility of the Association, including landscape maintenance and drainage maintenance. The Association shall also maintain all Protected Areas even where located on an Owner's Lot. Owners shall have the right to take action against the Association to enforce the Association's maintenance responsibilities.
- 4.2.5 Surface Water Management System. The Surface Water Management System for Hidden Harbor Estates provides for on-site stormwater retention within the Land. The Association has the power, authority and responsibility for the maintenance and operation of the Surface Water Management system, including dedicated lake tracts, lake maintenance or drainage easements, if any, and corresponding infrastructure. The Surface Water Management System is further discussed in Article V below.

4.3 **TELECOMMUNICATIONS SERVICES.** The Association, shall have the right, but not the obligation, to establish exclusive systems for the provision of telecommunication services such as cable television and internet. Notice is hereby given that the terms of any bulk installation and telecommunications service agreement shall be applicable to each Lot and each Owner shall be bound by the terms of any such agreement. The Association may have the right to receive, on a perpetual basis, all or a portion of access fees and/or the revenues derived from such telecommunications service within the Land as agreed, from time to time, between the telecommunications provider and the Association. All Lots shall be charged for the chosen telecommunications service regardless of whether the Owner desires such service. The telecommunications service shall be billed as part of the Individual Assessments owed to the Association. Certain additional telecommunication services offered by the telecommunications provider may be available on an individual subscriber basis. Any such systems for telecommunications services shall be mandatory for all Owners, regardless of when they took title to a Lot.

ARTICLE V

SURFACE WATER MANAGEMENT SYSTEMS AND PROTECTED AREAS

5.1 SURFACE WATER MANAGEMENT SYSTEM.

- 5.1.1 Purpose. The Surface Water Management System provides for on-site storm water retention within the Land. The Association owns the Surface Water Management System. The Surface Water Management System is designed to hold water during the rainy season, and standing water may result in the Land.
- 5.1.2 Operation, Maintenance and Repair. Except as otherwise specifically provided in this Declaration, the Association shall be responsible for the operation, maintenance and repair of the Surface Water Management System. Further, to the extent required by permits affecting the Land, the Association shall be responsible for preparation of annual reports and submission of water quality data as required by the District.

- 5.1.3 Notices and Disclaimers as to Water Bodies. By the acceptance of their deed or other conveyance or other interest in the Land, each Owner agrees not to enter upon, or allow children, pets, or other persons under their control or direction to enter upon, any moat, lake or other water body within the Land. The Association, and their respective officers, directors, employees, and management agents shall not be liable for any losses, damages, injuries or deaths arising from or relating to the foregoing.
- 5.1.4 Water Management Areas. Owners shall provide water management areas for their Lots in accordance with the requirements of the appropriate governmental agencies. Surface water drainage and management, including but not limited to, storm water storage capacity, shall conform to the approved and adopted water management plan of the applicable governmental agencies, and meet with the approval of the Association. Owners shall in no way deny or prevent egress and ingress to water management areas for maintenance or landscape purposes by the Association or any appropriate governmental agency, that may reasonably require such right of egress and ingress. Such egress and ingress shall be over paved or improved roadways or walks, to the extent practical. The expense of repairing damage caused by, or resulting from such maintenance of landscaping activities shall be the responsibility of the entity, the Association or other appropriate governmental agency, or their respective agents, causing said damage.
- 5.1.5 Prohibited Activities.
- 5.1.5.1 No structure of any kind shall be constructed or erected, nor shall any Owner in any way change, alter, impede, revise, or otherwise interfere with the flow and the volume of water in any portion of any water management area reserved for or intended by Developer, Association and appropriate governmental agencies to be reserved for drainage ways, sluice ways or for the accumulation of run off waters, as reflected in any plat, development order, or plans approved by the District or the County, without the specific written permission of the Association and the appropriate governmental agencies.
- 5.1.5.2 No Owner shall fill, dike, impede, block, divert or change the established water or retention and drainage areas that have been or may be created by easements, or by other legal form or agreement, without the prior written consent of the Association and the appropriate governmental agencies.
- 5.1.6 Berms. Certain Lots may be designed with a berm for stormwater management purposes. The Association is required to maintain any berms, according to stormwater management guidelines. Further, any lakes, lagoon or retention areas on a Lot shall at all times be maintained by the Association in a clean, attractive, pristine manner and be aesthetically pleasing.
- 5.1.7 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 Surface Water Management System caused by such Owner (including their agents, invitees or guests), or any unlawful discharge of

such Owner into the Surface Water Management System. In the event any damage to the Surface Water Management System by an Owner is not reimbursed by such Owner upon demand, the Association may levy and assess a Specific 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.

- 5.1.8 District Approval. Notwithstanding anything herein to the contrary, any amendment to this Declaration, the Articles, or By-Laws that will affect any aspect of the Surface Water Management System, including water management portions of the Common Areas, will require prior approval from the District.

5.2 PROTECTED AREAS.

- 5.2.1 Dedication. Certain Common Areas in Hidden Harbor Estates may be dedicated by the Developer and/or the Association as protected areas, subject to additional Rules and Regulations promulgated by the Developer and/or Association ("Protected Areas"). The Association has the power, authority and responsibility for maintenance and operation of the Protected Areas. All Owners are hereby notified that their Lots may be adjacent to wetland preservation or mitigation areas and upland buffers which may be protected under one or more conservation and/or preservation easements.

- 5.2.2 Maintenance and Monitoring. The Association is responsible for the maintenance and monitoring of all Protected Areas. The cost of maintaining and monitoring the Protected Areas shall be a Common Area Expense.

- 5.2.3 Use Restrictions. The Association shall enforce the use restrictions for the Protected Areas, and the Association shall take action against Owners, as necessary, to enforce the provisions of the conservation easements and the District Permit. Activities prohibited within the Protected Areas shall include, but not be limited to:

5.2.3.1 Construction or placing of buildings on or above the ground;

5.2.3.2 Dumping or placing soil or other substances, such as trash;

5.2.3.3 Removal or destruction of trees, shrubs or other vegetation, with the exception of exotic or nuisance vegetation removal;

5.2.3.4 Excavation, dredging or removal of soil material; and

5.2.3.5 Diking, fencing, or any other activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

- 5.2.4 Signage. The Association shall maintain all signage required to protect the Protected Areas.

ARTICLE VI
ASSOCIATION EXPENSES

In order to fulfill the covenants contained in this Declaration and in order to maintain and operate the Common Areas for the use, safety, welfare and benefit of Owners, their families, invitees, guests and lessees there is hereby imposed upon each Lot and its Owners the affirmative covenant and obligation to pay to the Association (in the manner set forth in this Article VI and Article VII hereof), and upon the Association, the obligation to assess, collect and expend, the Association Expenses, for those Association expenses described in this Declaration, including but not limited to the following:

6.1 **TAXES.** Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities, including all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments, and water drainage districts, and in general, all taxes and tax liens which may be assessed against the Common Areas and against any and all personal property and improvements which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue on such taxes.

6.2 **UTILITY CHARGES.** All charges levied for utilities providing services for the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, gas, electricity, irrigation, street lighting, telephone, sewer and any other type of utility or service charge.

6.3 **INSURANCE.** The premiums on any policy or policies of insurance obtained by the Association under this Declaration or the Hidden Harbor Estates documents.

6.4 **MAINTENANCE, REPAIR AND REPLACEMENT.** Any and all expenses necessary to:

- 6.4.1 Maintain and preserve the Common Areas (including the Surface Water Management System, the neighborhood entry feature, the main access road from U.S. 41, the internal roadways, and such expenses as grass cutting, tree trimming and other landscape maintenance, operating and maintaining sprinklers and the like); and
- 6.4.2 To keep, maintain, repair and replace any and all improvements upon the Common Areas in a manner consistent with the development of Hidden Harbor Estates, the covenants and restrictions contained herein, but not necessarily limited to, and all orders, ordinances, rulings and regulations of any and all federal, state and city governments having jurisdiction thereover as well as the statutes and laws of the State of Florida and the United States; and
- 6.4.3 Provide any other maintenance or services for which the Association is responsible;
- 6.4.4 Acquiring equipment for the Common Areas as may be determined by the Board, including, without limitation, all equipment and personnel necessary or proper for use or maintenance of the Common Areas; and
- 6.4.5 The Association shall not be responsible for replacement of any landscaping located on any Lot, even if replacement is due to negligence of the Association.

its agents, employees or any other party. Owner shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping on such Owner's Lot which, at the Association's sole discretion, is ordered to be replaced by the Association.

6.5 ADMINISTRATIVE EXPENSES. The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, notwithstanding the fact that some of these services may be expended in providing services to or collecting sums owed by particular Owners. In addition, the Association may retain a managing company or contractors to assist in the operation of Hidden Harbor Estates and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company contractor, attorney or certified public accountant so retained shall be deemed to be part of the Common Area Expenses.

6.6 INDEMNIFICATION. The costs to the Association to indemnify and save harmless its members, Board of Directors and Committees from and against any and all claims, suits, actions, damages and/or causes of action arising from any personal injury, loss of life and/or damage to property sustained in or about the Common Areas or the appurtenant thereto; from and against all costs, counsel fees, expenses and liabilities incurred relating to any such claim or in settlement thereof, the investigation thereof or the defense at any levels of any actions or proceedings brought thereon, and from and against any order, judgments and/or decrees which may be entered therein. Included in the foregoing provisions for indemnification are any expenses that the Association may incur in bringing suit for the purpose of enforcing rights hereunder, or for the purpose of compelling the specific enforcement of the provisions, conditions, covenants and restrictions contained in this Declaration to be kept and performed by the Association and/or the Owners, including the payment of Association Expenses. Further, the costs to the Association of indemnifying its officers and members of the Board of Directors for their duties, obligations and functions hereunder and in any legal defense of such actions or in settlement thereof including, without limitation, counsel fees and costs at all levels of any trial or appeal or other proceeding, costs of investigation and discovery, etc. Nothing in the provisions of this Section 6.6 shall require an Institutional Mortgagee to pay any Association Expense or portion thereof attributable to costs to the Association of indemnifying and saving harmless the Association in accordance with such Section. Any such Association Expense shall be reallocated among the Owners other than the Institutional Mortgagees.

6.7 ENFORCEMENT. Any and all expenses incurred by the Association in enforcing any of the covenants, restrictions, terms and conditions of this Declaration, including without limitation, attorney's fees and court costs, or in curing any default, violation or failure to perform to abide by such covenants, restrictions, terms and conditions.

6.8 RESERVE FUNDS. The costs to establish, as may be approved by the membership of the Association in compliance with Section 720.303(6), Florida Statutes, but without obligation to establish the same, an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Association. Each Owner acknowledges, understands and consents that such 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 reserve funds. The Association shall be responsible for maintaining the reserve funds in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid. Nothing herein shall obligate the Association to establish reserve accounts.

6.9 MISCELLANEOUS EXPENSES. The costs of all items of expense pertaining to or for the benefit of the Common Areas or any part thereof, or the Association or Hidden Harbor Estates not herein specifically enumerated and which is determined by the Association to be an Association Expense

related to the Common Areas or otherwise related to the operation of Hidden Harbor Estates, including, but not limited to, the cost of refuse collection if billed to the Association and the cost of providing security services including gate(s), any guard house(s) and fountain(s) for Hidden Harbor Estates in the event the Board of Directors elects to provide such services. The cost of maintaining the lawns on Lots within Hidden Harbor Estates shall also be an Association Expense, however, maintenance of areas of High Maintenance is not an Association Expense even though such maintenance may be performed by the Association. The Association may include the planting and replacement of annuals or other decorative plants and shrubs as part of its expenses, if deemed appropriate at the discretion of its Board of Directors. Areas of High Maintenance within individual Lots will be billed separately to the individual Owners.

6.10 RECREATION EXPENSE. The cost of membership in any association or entity providing recreational facilities and the maintenance, repair and improvement of any recreational facilities of the Association shall be an Association Expense.

6.11 SURFACE WATER MANAGEMENT SYSTEM. The cost of operation, repair and maintenance of the Surface Water Management System.

6.12 PROTECTED AREAS. The cost of maintaining and monitoring Protected Areas, or such other preservation and/or conservation areas that may exist on the Land.

ARTICLE VII

METHOD OF DETERMINING ASSESSMENT OF ASSOCIATION EXPENSES

7.1 ASSESSMENTS. It is hereby declared, and all Owners and the Association agree, that the Association Expenses shall be disbursed by the Association out of funds assessed and collected from all Owners in Hidden Harbor Estates.

7.2 INITIAL CAPITAL ASSESSMENT. Upon every initial transfer of record title to a Lot by Developer after the date of recording this Declaration, an Initial Capital Assessment in an amount equal to twenty-five percent (25%) of the then annual Individual Assessment for the subject Lot was made by, or on behalf of, the purchaser to a separate working fund account of the Association. The assessment funds, notwithstanding anything to the contrary herein, were utilized by the Association for working capital needs of the Association and replacements and additions deemed necessary or desired by the Board of Directors. The Developer was exempt from the payment of the contributions required by this Section. The Initial Capital Assessment required herein constituted an Assessment against the Lot and was subject to the same lien rights and other rights of collection applicable to other Assessments. No representation or warranty was made by the Developer or the Association that, on the date of the Turnover Event, any funds would be turned over to the Association from the Initial Capital Assessments. To the extent the Association made any claim against the Developer or its appointed directors for Common Area conditions or any other conditions existing at the date of the Turnover Event or prior acts or omissions by the Developer or the Developer's appointed Board of Directors, the contributions remaining at turnover (if any), together with the amounts then in the capital reserve accounts (if any) were applied to satisfy any obligation of the Developer or its appointed Board.

7.3 DETERMINING INDIVIDUAL ASSESSMENTS.

7.3.1 As provided in the By-Laws of the Association, the Board shall prepare an annual estimated Budget which shall reflect the annual Association Expenses described in this Declaration. Thereupon the Board of Directors shall allocate to all Hidden Harbor Estates Lots an equal share of the said annual Common Area

Expense. The share of the annual Association Expenses allocated to each Lot is the "Individual Assessment" for each Lot.

- 7.3.2 The Individual Assessment (as defined in Section 7.3.1 above) shall be payable at such time as the Board of Directors determines.

7.4 SPECIAL ASSESSMENTS. "Special Assessments" include, in addition to other assessments designated as Special Assessments in the Hidden Harbor Estates documents and whether or not for a cost or expense which is included within the definition of "Association Expenses", those assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring improvements for, or on, the Common Areas or the cost (whether in whole or part) of reconstructing or replacing such improvement or improvements on the Land and also any other assessments in addition to the Individual Assessments as shall be levied by the Board of Directors as a result of: (i) extraordinary items of expense under this Declaration; (ii) the failure or refusal of other Owners to pay assessments of Association Expenses; (iii) the costs associated with any weather event or hazard, including landscape replacement and repair following a freeze, hurricane or other storm; (iv) the cost to operate, maintain and replace the Surface Water Management System and the Retaining Wall, and (v) such other reason or basis determined by the Board which is not inconsistent with the terms of any of the Hidden Harbor Estates documents. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, the Guaranteed Assessments and any such Special Assessments assessed against Hidden Harbor Estates Owners shall be paid by such Owners in addition to any such Guaranteed Assessments to the fullest extent permitted by law. Special Assessments shall be assessed in the same manner as the Individual Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board of Directors shall from time to time determine.

7.5 SPECIFIC ASSESSMENTS. In addition to other assessments, the Association shall have the power to levy Specific Assessments against a particular Lot in accordance with the following purposes:

- 7.5.1 To cover the costs, including the overhead and administrative costs of providing services to one or more Lots upon request of the Owner(s) thereof pursuant to any special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and
- 7.5.2 To cover costs incurred in bringing the Lot into compliance with this Declaration, as amended from time to time, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees or guests.

7.6 LIABILITY OF OWNERS FOR INDIVIDUAL ASSESSMENTS. By the acceptance of a deed or other instrument of conveyance of a Lot in Hidden Harbor Estates, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for any and all Assessments, and other charges for which they are liable as provided for in this Declaration. Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner for Owner and Owner's heirs, executors, successors and assigns, that in the event Owner fails or refuses to pay any portion of any Assessments, then the other Owners may be responsible for increased Assessments due to the nonpayment by such other Owners and such increased Assessments can and may be enforced by the Association in the same manner as all other Assessments hereunder as provided in this Declaration.

7.7 RESALE CAPITAL ASSESSMENT. Upon acquisition of record title to a Dwelling Unit (Unit) by the first owner thereof other than Developer and upon each subsequent transfer or conveyance (of any type whatsoever), a contribution shall be made by or on behalf of the purchaser to the Resale Capital Account of the Association in an amount equal to twenty-five percent (25%) of the then annual Individual Assessment for the subject Lot. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid to the Association by separate check upon the closing or other settlement of the transfer or conveyance of the Unit. Any unpaid capitalization assessment shall constitute a lien in favor of the Association against the Unit and may be collected as provided for any other Association assessment or charge.

Notwithstanding the foregoing, a capitalization assessment shall not be levied in the following instances:

- (a) Conveyance of a Unit by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly-owned by the Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted from payment of the capitalization assessment pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the capitalization assessment;
- (b) Conveyance of a Unit by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted from payment of the capitalization assessment pursuant to this subsection, then this subsection shall not apply, and the Unit shall be subject to the capitalization assessment; and
- (c) Conveyance of an undivided interest in a Unit by the Owner thereof to any then existing co-Owner(s) of such Unit.

ARTICLE VIII

ESTABLISHMENT AND ENFORCEMENT OF LIENS

8.1 LIENS. Any and all Individual Assessments for Fines, Association Expenses, and Special Assessments and all installments thereof (collectively the "Assessments") with interest thereon at the highest rate allowed by law and costs of collection, including attorneys' fees are hereby declared to be a charge and continuing lien upon the Lot and Dwelling Unit against which each such Assessment is made. Each Assessment against a Lot and Dwelling Unit, together with late payment fees set by the Board and interest thereon at the highest non-usurious rate allowed by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) and costs of collection thereof, including attorneys' fees, shall be the personal obligation of the person, persons or entity owning the Lot and the Dwelling Unit assessed. As to Institutional Mortgagees, said lien shall be effective only from and after the time of recordation in the Public Records of the County, of a written, acknowledged, or sworn statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of the statement of lien. Where an Institutional Mortgagee obtains title to a Lot or Dwelling Unit as a result of foreclosure of its mortgage or deed given in lieu of foreclosing, such acquirer of title, its successors and assigns, shall not be liable for the share of Assessments pertaining to such Lot and/or Dwelling Unit or chargeable to the former Owner which became due prior to the acquisition of title by the Institutional Mortgagee, except that a first mortgage Lender shall be liable to the Association for the Lender's "safe harbor" contribution as set forth in Section 720.3085, Florida Statutes, or unless such assessments are secured by the Association's claim of lien that is recorded prior to the recording of the

foreclosed first mortgage. Such unpaid share of Assessments shall be added to the Assessments collectible from all other Lots and Dwelling Units in Hidden Harbor Estates. The foregoing shall not exclude an Institutional Mortgagee from payment of Assessments pertaining to a Lot and/or Dwelling Unit which accrue during the period of ownership of such Lot and/or Dwelling Unit by such Institutional Mortgagee whether or not such Lot and/or Dwelling Unit is occupied. Excepting only the lien of Institutional First Mortgage Lenders, the lien for fines, assessments, installments, late fees, interest, attorneys' fees and cost of collection shall be deemed to be effective and shall relate back to the date of the recording of the original version of this Declaration in the Public Records of the County, as to all other lien holders.

8.2 ENFORCEMENT. In the event any Owner shall fail to pay Assessments or any installment thereof charged to such Owner's Lot within fifteen (15) days after the same becomes due ("Delinquent Owner"), then the Association, through its Board of Directors, shall have any of the following remedies to the extent permitted by law:

- 8.2.1 To charge an administrative late fee equal to the greater of \$25.00 or five percent (5%) of the amount of the installment due, and interest at the highest rate allowed by law (and if no rate is specified, at eighteen percent (18%) per annum).
- 8.2.2 To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
- 8.2.3 To advance on behalf of the Delinquent Owner funds to accomplish the needs of the Association and the amount of or amounts of monies so advanced, including reasonable monies 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 the Delinquent Owner, together with interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum), may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.
- 8.2.4 To place of record a claim of lien against the Dwelling Unit and/or Lot of the Delinquent Owner.
- 8.2.5 To file a court action 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 like manner as a foreclosure of a mortgage on real property.
- 8.2.6 To file an action at law to collect said Assessment plus interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) plus court costs and attorneys' fees without waiving any lien rights and/or rights of foreclosure in the Association.

ARTICLE IX

INSURANCE

9.1 COMMON AREA INSURANCE. The Association shall purchase insurance coverage for the Common Areas subject to the following provisions:

- 9.1.1 Liability Insurance. The Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as Public Liability and/or Owners policies insuring the Association against any and all claims and demands made by any person or persons whomsoever for injuries received in connection with the use, operation and maintenance of Common Areas and improvements and buildings 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 reasonable limits as determined by the Board of Directors. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of law suits related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, liability of hazards related to usage and liability for property of others. All such policies will name the Association as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement", or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Association, or any other Owners or deny the claim of the Association because of the negligent acts of an Owner.
- 9.1.2 Casualty Insurance. The Association shall purchase and pay the costs of a policy or policies of insurance to allow the Association to insure any improvements, if any, now located or which may hereafter be located, built or placed upon the Common Areas against loss or damage caused by or resulting from at least the following: Fire and other hazards covered by the standard extended coverage endorsement, sprinkler leakage, windstorm, vandalism, malicious mischief, water damage, flood, debris removal and demolition, and such other risks as the Association shall determine are customarily covered with respect to developments similar to Hidden Harbor Estates in construction, location and use.
- 9.1.3 Fidelity Coverage. The Association shall purchase and maintain an insurance policy or fidelity bond to protect against dishonest acts of the officers and employees of the Association and the Directors and all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. As used in this Section, the term "persons who control or disburse funds of the Association", includes, but is not limited to, persons authorized to sign checks on behalf of the Association, and the president, vice-president, secretary, treasurer and Directors of the Association. The Association shall bear the cost of any insurance or bond. If annually approved by a majority of the voting interests present at a properly called meeting of the Association, the Association may waive the requirement of obtaining an insurance policy or fidelity bond for all persons who control or disburse funds of the Association.

9.2 **MISCELLANEOUS INSURANCE.** The Association may also obtain such other forms of insurance and such coverages as the Association shall determine for the protection and preservation of the Common Areas. Such insurance may include, without limitation, worker's compensation insurance and flood insurance.

9.3 **POLICY CANCELLATION.** All insurance policies and fidelity bonds obtained by the Association shall provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association. In the event of cancellation, the Association shall make its best effort to replace the policy and coverage without lapse.

9.4 **INSURANCE TRUSTEE.** The Board of Directors may, if it deems it to be in the best interest of Hidden Harbor Estates or the Association, provide that insurance policies be deposited with an Insurance Trustee whose duty shall be to receive any and all proceeds from the insurance policies held by it and to pay such proceeds to the Association pursuant to the terms hereof.

ARTICLE X

GRANT AND RESERVATION OF EASEMENTS

The Developer granted the following easements over and across the Land for the duration of the term of this Declaration (except as hereafter provided), for the benefit of the parties or properties as hereinafter specified, for the following purposes:

10.1 **UTILITY AND GOVERNMENTAL SERVICES EASEMENTS.** An easement or easements to provide utility services, including (but not necessarily limited to) power, electric transmission, television, cable, light, telephone, gas, water, sewer and drainage and governmental services including police and fire protection, rights of access to maintain, repair, replace or install fixtures and appurtenances necessary for such utility and governmental services for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies, etc. The Association has the power, authority and responsibility for maintenance and operation of the utility easements/tracts or facilities.

10.2 **RIGHTS-OF-WAY.** A perpetual, non-exclusive easement is hereby declared, granted and reserved in favor of the Association, and Owners, their lessees and family members, guests and invitees over and through the walks, road rights-of-way and other rights-of-way within the Common Area to provide ingress, egress and access to and from, through and between the Land and publicly dedicated roads. The internal roadways within Hidden Harbor Estates may be dedicated to the public by deed or plat dedication to the County.

10.3 EASEMENT FOR ENCROACHMENT.

10.3.1 An easement for encroachment in favor of all Owners in the event any portion of any part of a Dwelling Unit now or hereafter encroaches upon any of the other Dwelling Units, Lots, or other portions of Hidden Harbor Estates as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement.

10.3.2 An easement for encroachment in favor of Owners and the Association where any portion of the Common Areas encroaches upon any portion of the Land or any Lot therein.

10.3.3 An easement in favor of the Owner of each Dwelling Unit for encroachment of any portion of the Dwelling Unit upon the Common Areas because of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement.

- 10.3.4 Any encroaching improvements within the easement areas described herein shall remain undisturbed for so long as the encroachment exists. The easements for encroachment include an easement for the maintenance and use of the encroaching improvements in favor of the Owner or Owners thereof and their designees.

10.4 MAINTENANCE EASEMENT. There shall be easements over and across any abutting Lot ("Burdened Lot") on the side Lot lines for maintenance and repair of any Dwelling Unit or structure, constructed on the adjacent Lot ("Benefitted Lot"), provided the easement does not extend beyond five feet (5') from the property line and that maintenance and repair is conducted in a reasonable, timely manner, with reasonable notice to the Owner of the Burdened Lot, and during reasonable hours, and further provided that the Owner of the Benefitted Lot is responsible for all costs for all and any damage or other liability arising from such maintenance and repair activities, including any damage to any landscaping or structures. The Owner of the Benefitted Lot shall also have the right to ingress and egress over the non-improved portions of the Burdened Lot as necessary to obtain access to the maintenance easement for maintenance and repair activities. In the event the Association shall exercise its rights to maintain or repair any structure or improvements, including signs, benefitted by this easement, they shall possess and be entitled to exercise the same rights as the Owner of the Benefitted Lot. This right of easement shall not affect the rights of the Owner of the Burdened Lot to construct and maintain such principal or accessory structure upon the Burdened Lot as may be authorized by the Hidden Harbor Estates documents, provided the same complies with the applicable setback requirements. Moreover, this easement shall not be deemed to prohibit any landscaping in such easement area, provided the same is otherwise permitted, and use of the easement by the Owner of the Benefitted Lot shall damage any such landscaping.

10.5 RIGHT OF ASSOCIATION TO ENTER UPON THE LAND. An easement or easements for ingress and egress in favor of the Association by its Board of Directors or the designees of the Association to enter upon each portion of the Land, including Lots, but excluding structures located thereon unless expressly authorized in this Declaration, for the purpose of fulfilling its duties and responsibilities of ownership, administration, maintenance and repair in accordance with the Hidden Harbor Estates documents.

10.6 USE AND ENJOYMENT OF COMMON AREAS. A nonexclusive easement for the use and enjoyment and for access over and to the Common Areas on behalf of the Association, and Owners, their lessees, family members, guests and invitees; provided, however, an Owner's easement to such use and enjoyment may be temporarily suspended by the Association upon written notice for a period not to exceed thirty (30) days for failure of an Owner, such Owner's lessee, or their family members, guests or invitees to conform to the Rules and Regulations promulgated by the Association in regard to use of the Common Areas.

10.7 DRAINAGE. Without limiting the generality of the easement in Section 9.2, above, a non-exclusive easement is reserved unto and granted to the Association, over, across and through the Land for the purpose of providing drainage and for the installation, operation, use and maintenance of drainage facilities including the Surface Water Management System. No structure, planting, fill or other material shall be placed or permitted to remain which may damage or interfere with the use of such easements.

10.8 MANGROVE AND SEA GRAPE TRIMMING. Without limiting the generality of the easement in Section 10.2, above, a perpetual, non-exclusive easement shall exist and is hereby reserved over those portions of the Land that contain and/or border mangroves, sea grapes or similar coastal plant

species in favor of the Association, and their agents and designees, for the purpose of trimming, pruning or performing similar maintenance and/or preservation activities.

10.9 WALLS, BERMS, LANDSCAPE BUFFERS AND FENCES. Without limiting the generality of the easement in Section 10.2, above, a perpetual, non-exclusive easement of ingress and egress over, across and through all applicable portions of the Land is hereby granted to the Association for purposes of construction, installation and maintenance activities related to any walls, berms, landscape buffers and fences constructed by the Association. The Association as applicable, shall exercise its powers of ingress and egress in a manner which does not unreasonably interfere with use of the Land over which ingress or egress is utilized.

10.10 BOAT DOCKS AND HARBOR. Without limiting the generality of the easement in Section 10.2, above, a perpetual, non-exclusive easement shall exist and is hereby reserved over Lots in favor of the Association, and all governmental agencies, and their agents and designees, for the purpose of accessing the boat docks and Harbor for the purposes set forth in this Declaration, including the Exhibits.

10.11 PLAT. Any easements or dedications set forth on the Plat that are not otherwise specifically set forth herein are hereby incorporated by this reference and reserved to the party(ies) set forth on the Plat for the use(s) or purpose(s) described thereon.

10.12 ASSIGNMENT; ADDITIONAL EASEMENTS. The easements reserved hereunder have been assigned by Developer in whole or in part to the Association, any city, county or state government or agency thereof or any duly licensed for franchised public utility, or any other designee of Developer. The Owners, by the acceptance of a deed of conveyance of a Lot, authorize the Association to execute on their behalf and without further authorizations, such grants of easements or other instruments as may from time to time be necessary to grant easements over and upon the Land or any portion or portions thereof in accordance with or to implement the provisions of this Article. Notwithstanding the foregoing, no such easement shall be permitted or deemed to exist which causes any buildings, permanent structures or other permanent facilities within Hidden Harbor Estates which have been constructed (i) in accordance with the Hidden Harbor Estates documents; and (ii) prior to the use of such easements, to be materially altered or detrimentally affected thereby nor shall any such easement be granted or deemed to exist under any such structures or buildings so built in accordance with this Declaration and the Hidden Harbor Estates documents prior to the actual use of such easement. The foregoing shall not preclude such easements under then existing improvements other than buildings or structures provided that the use and enjoyment of the easement and the installation of facilities in connection therewith would not result in other than minor, temporary alterations to such improvements other than a building or structure (such as, but not necessarily limited to, temporary alteration or removal of a fence or temporary excavation within a paved area) and provided that same is repaired and/or restored by the one making use of such easement at its expense and within a reasonable time thereafter.

10.13 NO REMOVAL OF ACCESS OR DRAINAGE EASEMENTS. Notwithstanding any provision herein to the contrary, the access and drainage easements evidenced hereinabove, may not be removed by subsequent owners of Lots nor shall any amendment to this Declaration terminate such easements without the consent of the District.

ARTICLE XI **CONDEMNATION**

11.1 TAKING OR PARTIAL TAKING. If at any time during the term of this Declaration the whole or any portion of the Common Areas shall be taken ("Taken Area") for any public or quasi-

public purpose by any lawful power or authority by the exercise of the right of eminent domain or by agreement between those authorized to exercise such right (hereinafter for the purpose of this Section called ("Condemnation"), this Declaration and all obligations hereunder as to the Taken Area shall terminate and expire on the date of such taking, and any and all expenses provided to be paid for such Taken Area shall be appointed and paid to the date of such taking. The Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and/or agreements with the condemning authority for acquisition of the Taken Area, or part thereof, by the condemning authority.

11.2 DIVISION OF AWARDS. The rights of the Association and other Owners in and to the net award or awards ("Taken Area Award") after any Condemnation (after reasonable fees and expenses of collection) shall be determined as follows:

11.2.1 To the extent that the Association owns any Dwelling Units or Lots within Hidden Harbor Estates, the Association shall participate in any Taken Area Awards for its interest in the Common Areas along with and to no lesser degree than other Owners.

11.2.2 The Association shall have the right to attend and participate in all hearings relevant to the Condemnation and to receive its share of all awards for the taking of its property.

11.3 REPAIR AND REPLACEMENT. If any improvements upon the Common Areas not included in the Taken Area shall be damaged or partially destroyed by such Condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace or rebuild such improvements so such improvements are complete and in good condition and repair. The Association shall hold that portion, if any, of the Taken Area Award which represents consequential damages to said improvements or replacements thereof in trust for application of the same to the cost and expense as herein provided. Repair of such improvements shall be conducted under the supervision of any contractor, architect or engineer licensed in the State of Florida selected by the Association, and such work shall be done in accordance with plans and specifications prepared and approved in writing by such contractor, architect or engineer and submitted to the Association for approval, which approval shall not unreasonably be withheld.

11.4 TEMPORARY USE. If the temporary use of the whole or any part of the Common Areas shall be taken at any time during the term of this Declaration by the exercise of the right of Condemnation, the term of this Declaration shall not be reduced or affected in any way, and the Association Expenses herein provided to be paid shall continue to be due and payable and the various Owners shall be entitled to the entire award granted by reason of such taking.

11.5 TAKING OF LAND. In the event of any Condemnation of the Land, the award therefor and with interest thereon as shall represent compensation for the value of the property taken shall be payable jointly to the record Owner or Owners and Institutional Mortgagee or Institutional Mortgagees thereof as of the date of taking in accordance with respective interests in such property.

ARTICLE XII **ENFORCEMENT**

12.1 The covenants and restrictions contained in the Hidden Harbor Estates documents may be enforced by the Association, any Owner and any Institutional Mortgagee holding a first mortgage on a

Dwelling Unit upon a portion of the Land in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant or restriction hereunder. The failure by any party to enforce any covenant, restriction or easement herein contained shall in no event be deemed a waiver of such covenant, restriction or easement. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees.

12.2 The District has the right to take enforcement action, including a civil action, for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System facilities, Protected Areas or conservation areas under the responsibility or control of the Association.

ARTICLE XIII

AMENDMENT AND MODIFICATION

13.1 In addition to amendments as provided for elsewhere in this Article, following the Turnover Event, this Declaration may be amended at any regular or special meeting of the Owners called and held in accordance with the By-Laws by the affirmative vote of the Owners owning a majority of the Lots. An amendment to the Declaration shall be evidenced by a certificate executed by the Association. The amendment shall become effective upon the recording of the certificate in the Public Records of the County.

13.2 Whenever it shall appear to the Association that there is a technical or minor defect, error or omission in the Declaration, the Association, through its Board of Directors may amend the Declaration without any other consents or notices. The amendment shall become effective upon the recording of a certificate in the Public Records of the County.

13.3 No amendment to the Hidden Harbor Estates documents shall be adopted which would affect the Surface Water Management System, the Protected Areas, conservation areas and/or including the water management portions of the Common Areas without the prior approval of the district.

ARTICLE XIV

TERM

This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, easements, burdens and liens contained herein, including without limitation, the provisions for assessment of a Dwelling Unit or Lot, shall run with and bind the Land and inure to the benefit of the Association, Owners and their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date of the recording of this Declaration in the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless at least one (1) year prior to the termination of such twenty-five (25) year term or any such ten (10) year extension thereof, there is recorded in the Public Records of the County, an instrument signed by (i) the then Owners owning two-thirds (2/3) of the Lots and (ii) all Institutional Mortgagees in existence one (1) year prior to the termination of such term or extension, agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of the twenty-five (25) year term or the ten (10) year extension during which such instrument of termination is recorded.

ARTICLE XV
GENERAL PROVISIONS

15.1 **NOTICES.** Any notices or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid or via electronic means such as email to those owners who have agreed to such electronic notices to: (i) any Owner, to the last known postal or electronic address of the person whose name appears as the Owner on the records of the Association at the time of such mailing; and (ii) the Association at such address as the Association shall hereafter notify all Owners of in writing.

15.2 **CAPTIONS.** Article and Section 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.

15.3 **SEVERABILITY.** In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, such determination shall in no way affect any of the other provisions hereof which shall remain in full force and effect. Further, the invalidation of any of the covenants or restrictions or terms and conditions of this Declaration or a reduction in the term of the same by reason of the rule of law known as the "rule against perpetuities" shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

15.4 **MANAGEMENT.** The Association, pursuant to resolution duly adopted by its Board of Directors, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board of Directors from time to time.

15.5 **ATTORNEYS' FEES.** Any provision herein for the collection or recovery of attorneys' fees shall be deemed to include, but not be limited to, court costs and attorneys' fees for the attorneys' services at all trial and appellate levels and post judgment proceedings and, unless the context clearly indicates a contrary intention, whether or not suit is instituted.

15.6 **INTERPRETATION.** In the event of a conflict between the provisions of this Declaration and the Articles and By-Laws, the provisions of this Declaration shall control.

15.7 **RULES AGAINST PERPETUITIES.** In the event any court should hereafter determine any provisions as originally drafted herein are in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rule of law, and for such purpose, "measuring lives" shall be those of the signatories hereof.

15.8 **SECURITY SYSTEM.** The Association is not obligated to install a security system, but the Association may elect to install such a security system. In that event, the Association shall provide and pay for monitored service for such security system as may be installed by the Association. Owners shall be responsible for maintenance and repair of any security system equipment located on their Lot and the Association shall be responsible for maintenance and repair of security system equipment located on Common Areas. An easement to the Association for access and maintenance or repair of security system equipment is hereby established. No Owner may change, alter or replace any security system equipment that is part of the system for which the Association arranges and pays for monitoring without written approval of a majority of the Association's Board of Directors. If an Owner fails to keep security system

equipment in good maintenance and repair, the Association may, but need not, effect any needed maintenance or repair. The Association and its directors, agents, employees, and assigns shall not be liable to Owners for any action or inaction in connection with or arising from the security system or security system equipment, including, but not limited to, its own negligence or delay in maintenance or repairs.

15.9 **CONTEXT.** Whenever the context so 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 and pronouns herein may be deemed to mean the corresponding plural form thereto and vice versa.

(NO SIGNATURES OR NOTARIES APPEAR)

EXHIBITS

- | | | |
|--|---|--------------------------------------|
| A – Legal Description of Hidden Harbor | - | No changes proposed. |
| B – Articles of Incorporation | - | Copy with proposed changes attached. |
| C – Bylaws of Association | - | Copy with proposed changes attached. |
| D – South Florida Water
Management Permit | - | No changes proposed. |
| E – Original Site Plan | - | No changes proposed. |
| F – Harbor Vessel Rules | - | No changes proposed. |

EXHIBIT "A"

LEGAL DESCRIPTION

All land, including, without limitation, all lots, tracts, parks, common areas, limited common areas, submerged lands, canals lakes, and easement areas, shown, lying within, and legally described in the plat of HIDDEN HARBOR ESTATES, according to the map or plat thereof, as recorded in Official Records Instrument Number 2015000133775 of the Public Records of Lee County, Florida.

EXHIBIT "B"
OF AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS, AND EASEMENTS

AMENDED ARTICLES OF INCORPORATION

AMENDED
ARTICLES OF INCORPORATION
OF
HIDDEN HARBOR ESTATES PROPERTY OWNERS' ASSOCIATION, INC.

The undersigned hereby submits these AMENDED articles for the above not-for-profit corporation under Chapter 617, Florida Statutes, and certifies as follows:

ARTICLE I
Corporate Name

The name of the corporation is Hidden Harbor Estates Property Owners' Association, Inc., hereinafter called the "Association".

ARTICLE II
Address

The principal office of the Association shall be located at mailing address 1625 Hendry Street, Suite 301, Fort Myers, Florida 33901, the address of the Association's current Registered Agent, Thomas B. Hart, or at such other place as may be subsequently designated by the Board of Directors of the Association.

ARTICLE III
Purpose and Powers of the Association

This Association does not contemplate pecuniary gain or profit to the members thereof and shall make no distribution of income to its members, directors or officers. The specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the residential lots, common areas and improvements (as defined in the AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR HIDDEN HARBOR ESTATES, referred to hereinafter as the "Declaration") according to the provisions of the Declaration and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose.

The Association shall have the following powers:

(a) To exercise all of the common law and statutory powers of a corporation not for profit organized under the laws of the State of Florida, including without limitation as set forth in Section 617.0302, F.S., that are not in conflict with the terms of the Declaration, these Articles or the Bylaws or the Association;

(b) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration applicable to the property and recorded or to be recorded in the Public Records of Lee County, Florida, and as the same may be

amended from time to time as therein provided, said Declaration being incorporated herein by reference as if set forth in its entirety:

(c) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Association, including but not limited to all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(d) To maintain, repair and operate the property of the Association;

(e) To purchase insurance upon the property of the Association and insurance for the protection of the Association and its members as Lot Owners;

(f) To reconstruct improvements after casualty and make further improvements upon the property;

(g) To enforce by legal means the provisions of the Declaration, and the Articles of Incorporation and Bylaws of the Association, and the rules and regulations adopted pursuant thereto or established from time to time;

(h) To employ personnel to perform the services required for proper operation and maintenance of the property dedicated to the Association and any corresponding infrastructure;

(i) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association; and

(j) To sue and be sued and appear and defend all actions and proceedings in its corporate name.

ARTICLE IV

Membership

Section 1. Generally: No person except an Owner, as such terms are defined in the Declaration, is entitled to membership in the Association; and all Owners shall be members of the Association, as provided in this Article.

Section 2. Membership: Every Owner who holds record title to a residential lot that is subject to assessment under the Declaration shall be a member of the Association. Each membership shall be appurtenant to the residential lot and shall be transferred automatically by a conveyance of record title to such lot. An owner of more than one lot is entitled to one membership for each residential lot to which such Owner holds record title. If more than one person holds an interest in any residential lot, all such persons shall be members; provided however, that only one vote shall be cast with respect to any one residential lot. No person other than an Owner may be a member of the Association, and a membership may not be transferred except by a transfer of record title to the residential lot to which it is appurtenant.

ARTICLE V

Voting Rights

Section 1. Voting: All members shall be entitled to one (1) vote for each residential lot owned. If more than one (1) person holds record title to a residential lot, there shall be only one vote cast with respect to such lot, exercised as the owners determine among themselves.

ARTICLE VI

Board of Directors

The affairs of this Association shall be managed and governed by a Board of Directors consisting of at least three (3) Directors, who shall be elected. The number of Directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successor are:

Name	Address
Ty Roland	1625 Hendry Street, Suite 301 Fort Myers, FL 33901
Kelle Donohue	1625 Hendry Street, Suite 301 Fort Myers, FL 33901
Tom Gamble	1625 Hendry Street, Suite 301 Fort Myers, FL 33901
John Daugherty	1625 Hendry Street, Suite 301 Fort Myers, FL 33901
Nick Pietkiewicz	1625 Hendry Street, Suite 301 Fort Myers, FL 33901

ARTICLE VII

Officers

The affairs of the Association shall be administered by a President, a Vice-President, a Secretary and a Treasurer and such other Officers as may be designated from time to time by the Directors. The Officers shall be elected or designated by the Board of Directors at its first meeting following the Annual Meeting of the members of the Association. The names and position of the Officers who shall serve until their successors are elected or designated by the Board of Directors are as follows:

President	Ty Roland
Vice President	Tom Gamble
Secretary	Kelle Donohue
Treasurer	Tom Gamble

ARTICLE VIII

Indemnification

Every Director and every Officer of the Association, and every member of the Association serving the Association at its request, shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement of any proceeding to which he/she may be a party or in which he/she may become involved by reason of his/her being or having been a Director or Officer of the Association, or by reason of his/her having served the Association at its request, whether or not he/she is a Director or Officer or member serving the Association at the time such expenses or liabilities are incurred, except when the Director, Officer or member serving the Association is adjudged guilty of willful misfeasance or malfeasance in the performance of his/her duties; provided that in the event of a settlement before entry of judgment, the indemnification shall apply only when the Board of Directors approve such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director, Officer or member serving the Association may be entitled.

ARTICLE IX

Bylaws

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded, at a duly called regular or special meeting of the members, by an affirmative vote of a majority of all the members present in person or by proxy.

ARTICLE X

Dissolution

The Association may be dissolved upon written assent signed by members holding not less than one hundred percent (100%) of the total number of votes of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or organization to be devoted to such similar purposes.

ARTICLE XI

Term

Section 1. Term: The term of the Association shall be perpetual.

Section 2. Dissolution: In the event of dissolution, any portion of the Land consisting of the Surface Water Management System shall be conveyed to an appropriate agency or government. If not

accepted, the system must be deeded to a Florida corporation, not-for-profit, that will accept responsibility.

ARTICLE XII

Amendments

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner:

Section 1. Notice: Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

Section 2. Vote: A resolution for the adoption of an amendment may be proposed by either the Board of Directors or by 20% of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or within 45 days of the final adjournment of the meeting. Except as elsewhere provided, such resolutions must be adopted by not less than fifty-percent (50%) of the votes of the entire membership of the Association.

Section 3. Limit on Amendments: No amendment shall make any changes in the qualifications for membership, nor in the voting rights of members, without approval in writing by all members.

Section 4. Certification: A copy of each amendment shall be certified by the Secretary of State.

ARTICLE XIII

Incorporator

The name and address of the incorporator of these Articles of Incorporation was:

Chad Kocses
2647 Professional Circle, Suite 1201
Naples, Florida 34119

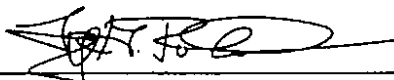
ARTICLE XIV

Registered Office and Agent

The street address of the current registered office of this corporation is, 1625 Hendry Street, STE 301, Fort Myers, Florida 33901 and the name of the current registered agent of this corporation is Thomas B. Hart. The registered agent of the Association shall maintain copies of all further permitting actions for the benefit of the Association.

ADOPTED on the 21st day of April, 2022.

IN WITNESS WHEREOF the subscriber, being the undersigned person, named as President of the Corporation, has hereunto set his/her hand and seal, this 20 day of SEPTEMBER, 2022.

By: 
Ty Roland

ACCEPTANCE OF DESIGNATION AS REGISTERED AGENT

Having been named as registered agent to accept service of process for the above stated corporation, at the place designated in the certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity, this 20 day of September, 2022.



Thomas B. Hart

EXHIBIT "C"
OF AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS, AND EASEMENTS

AMENDED BYLAWS

AMENDED
BYLAWS
OF
HIDDEN HARBOR ESTATES PROPERTY OWNERS' ASSOCIATION, INC.

Hidden Harbor Estates Property Owners' Association, Inc., a corporation not for profit under the laws of the State of Florida, hereinafter referred to as the "Homeowners Association" or the "Association" sets forth these Bylaws:

ARTICLE I
IDENTITY AND DEFINITION

1.1 This Homeowners Association is organized for the purpose of providing an entity for the preservation and enhancement of property values in Hidden Harbor Estates, a planned community located in Lee County, Florida, in accordance with the Declaration of Covenants, Restrictions and Easements for Hidden Harbor Estates, herein called the "Declaration", which is to be recorded in the Public Records of Lee County, Florida, as same may be amended. The terms and provisions of these Bylaws are expressly made subject to the terms, provisions, conditions and authorization contained in the Declaration executed by SD Hidden Harbor, LLC, a Florida limited liability company (hereinafter referred to collectively as "Developer").

1.2 All terms which are defined in the Declaration have the same meanings herein as defined in the Declaration.

ARTICLE II
LOCATION OF PRINCIPAL OFFICE

The principal office of the Association is located at 1625 Hendry Street, Suite 301, Fort Myers, FL 33901, or at such other place as may be established by resolution of the Board of Directors of the Association.

ARTICLE III
MEMBERSHIP VOTING, QUORUM AND PROXIES

3.1 The qualification of members, the manner of their admission to membership and termination of such membership, and voting by the members, shall be as set forth in the Declaration.

3.2 A quorum of any meeting of the Association's members shall consist of persons entitled to cast votes representing more than thirty percent (30%) of the total votes entitled to be cast in person or by proxy as determined in the manner set forth in the Declaration.

3.3 Where a vote is entitled to be exercised by more than one person or by a corporation, partnership or other entity, the vote shall be cast by the person named in a certificate signed by all of the individual owners or the appropriate official(s) or representative(s) of such entity. Such certificates shall be filed with the Secretary of the Association and shall remain valid until revoked by subsequent certificate.

3.4 Votes may be cast either in person or by proxy. Proxies are valid only for the particular meeting designated thereon and must be filed with the Secretary at or before the time of the meeting. A proxy is not valid for longer than ninety days after the date of the first meeting for which it was given, unless the proxy specifically states otherwise.

3.5 Except where otherwise required under the provisions of the Articles of Incorporation, these Bylaws, the Declaration or where the same may otherwise be required by law, the affirmative vote of the holders of more than one-half (1/2) of the total votes represented at any meeting at which a quorum is present is necessary for approval of any matter that is to be binding upon all members.

3.6 The Association is entitled to give all notices required to be given to the members of the Association by these Bylaws or the Articles of Incorporation or the aforesaid Declaration to the person or entity shown by the Association's records entitled to receive such notices at the last known address shown by the records of the Association, until the Association is notified in writing that such notices are to be given to another person or entity or at a different address.

3.7 Change of membership in the Association is established by recording in the Public Records of Lee County, Florida, a deed or other instrument establishing a change in record title to the property interest underlying a right to vote as a member of the Association. The owner established by such instrument becomes a member of the Association, and the membership of the prior owner is terminated. The Association may establish reasonable rules requiring appropriate evidence of any such change as may reasonably be required by the Association to be furnished. The Association may rely upon its record of members.

3.8 Matters coming before the Association for consideration shall fall into two categories. General matters relating to the affairs of the Association which are subject to the approval or disapproval of the Association members will be voted on at a meeting of the Association through votes cast by each member. Matters requiring Association approval and relating to amendment of the Declaration, approval of additional property being added to the lands subject to the Declaration, or the approval of Improvement Assessments will require the direct vote of the members of the Association.

3.9 Subject to the Declaration and other provisions of these Bylaws, voting at any meeting may be by roll call, voice vote, written ballot or written consent, or by electronic means. Whenever written approval is required, or whenever an amendment to or termination of the Declaration is proposed, or any borrowing of funds, pledge, or other disposition of the Common Areas or other assets is proposed, the voting must be in writing. Routine matters such as approval of Minutes, adjournment, acceptance of reports, and social business shall be determined by "yeas" or "nays". A roll call vote, or a written ballot vote, may be required instead of a voice vote by the Board of Directors, or by the holders of twenty votes.

ARTICLE IV ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

4.1 The annual meeting of the membership of the Association shall be held no later than May 1st of each year, at the office of the Association, or at such other place as may be designated by the Board of Directors, at a time designated by the Board of Directors in the notice of the meeting, for the purpose of electing directors and transacting any other business authorized to be transacted by the Members.

4.2 Special meetings of the members of the Association shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors. Such meeting must also be called by such officers upon receipt of a written request from members of the Association whose votes represent

thirty-three percent (33%) of the total votes of the Association as determined in the manner set forth in the Declaration.

4.3 Notice of all members' meetings, regular or special, shall be given to each member, unless waived in writing. Such notice shall be written or printed and shall state the time, place and the subject for which the meeting is called. Unless a longer notice period is required by the Declaration or these Bylaws in instances where direct voting is required, such notice shall be given not less than fourteen (14) nor more than thirty (30) days prior to the date set for such meeting, which notice shall be mailed or presented personally, or electronically transmitted to each member within said time; provided members have consented in writing to the electronic delivery of notice. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail, postage prepaid, addressed to the member at such post office address as appears on the records of the Association. If electronically transmitted, such notice shall be deemed to be properly given when sent, addressed to the member at such electronic address as appears on the records of the Association. Proof of compliance with the notice requirements set forth herein shall be given by the affidavit of the person giving the notice and filed in the Association's official records. In addition to mailing, delivering, or electronically transmitting the notice of any meeting, the Association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the Association. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and agenda. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether executed and filed before or after the meeting, shall be deemed to be equivalent to the giving of such notice to such member.

4.4 Special meetings will be held in Lee County, Florida, as designated by the Board of Directors in the Notice of Meeting.

4.5 If any membership meeting cannot be organized because a quorum has not attended or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these Bylaws or the Declaration, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

4.6 In meetings of the membership, the President, or, in his or her absence, the Vice-President, shall preside, or in the absence of both, the membership shall select a chairman.

4.7 The order of business at the annual meeting of the Members and, as far as applicable and practical, at any other members' meeting, shall be as follows:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of the meeting or waiver of notice;
- (c) Reading of minutes or waiver thereof;
- (d) Reports of officers;
- (e) Reports of committees;
- (f) Appointment by the President of inspectors of election;
- (g) Election of directors;
- (h) Unfinished business;
- (i) New business;
- (j) Adjournment.

4.8 Whenever the vote or the approval of the members is required or permitted, the action may be taken without a meeting if those members holding not fewer than seventy-five percent (75%) of the total votes entitled to be cast if a meeting were to be held, agree in writing to take the action and waive the formality of a meeting. If a greater percentage of approval is required, not less than such percentage must agree in writing to waive the meeting. The Declaration, Articles, and these Bylaws may not be amended without a meeting. Notice of any action taken without a meeting shall be given in writing to all members who did not approve such action within ten (10) days of such action.

ARTICLE V BOARD OF DIRECTORS

5.1 The affairs of the Association shall be managed by a Board of Directors initially consisting of three (3) directors, which number of Directors may be increased in accordance herewith. A majority of the Board of Directors shall constitute a quorum to transact business at any meeting of the Board, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the Board of Directors.

5.2 Any vacancy occurring on the Board of Directors because of death, resignation, removal or other termination of services of any Director, shall be filled by the Board of Directors. The Director appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office and shall continue to serve until his or her successor shall have been elected or appointed and qualified.

5.3 The term of each Director's service shall extend to the next annual meeting at which the Director's term is scheduled to expire, and then until the successor Director is duly elected and qualified, or until the Director is recalled in the manner provided below. Initially, the Board may establish Director terms of more than one year so that the terms are staggered to assure continuity. However, in no event shall a Director's term exceed three (3) years. Excepting the initial implementation of staggered terms, each Director's term shall be of the same length.

5.4 Any Director may be recalled and removed from office with or without cause by the vote or agreement in writing of a majority of all votes entitled to be cast for Directors. A special meeting of the members to recall a member or members of the Board of Directors may be called by the holders of ten percent (10%) of the votes entitled to be cast for Directors, giving notice of the meeting as required by these Bylaws. The notice shall state the purpose of the meeting. Any vacancy on the Board of Directors thus created shall be filled by the members of the Association at the same meeting.

(a) If the recall is approved by a majority of all votes entitled to be cast for Directors, the recall is effective immediately, and the recalled member or members of the Board of Directors shall turn over to the Board any and all records of the Association in their possession within 72 hours after the meeting.

(b) If the proposed recall is an agreement in writing by a majority of all votes entitled to be cast for Directors, the agreement shall be served on the Association by certified mail. The Board of Directors shall call a meeting of the Board within seventy-two (72) hours after receipt of the agreement and shall either certify the agreement to recall a member or members of the Board, in which case such member or members shall be recalled effective immediately and shall turn over to the Board, within seventy-two (72) hours, any and all records of the Association in their possession, or in writing challenge such recall setting of the facts and legal basis for not certifying such recall.

(c) During a meeting of members to recall one (1) or more members of a Board of Directors, the members shall select and announce the name and address of a representative to receive

pleadings, notice, or other papers on behalf of the petitioning members in the event that the vote at the meeting is disputed and a petition for arbitration is filed as provided in Florida Statutes Chapter 682. If a proposed recall is sought by written agreement, pleadings, notices, or other papers on behalf of the members executing the agreement in the event the Board of Directors determines not to certify the agreement to recall and files a petition for binding arbitration.

(d) Unless otherwise provided in the Declaration or Bylaws, the proposed recall of more than one (1) member of the Board of Directors shall require a separate vote for each member sought to be recalled or, where recall is attempted by written agreement, a separate agreement is required for each member of the Board being recalled.

5.5 Any Director may resign at any time by sending or personally delivering a written notice of resignation to the Association, addressed to the Secretary. The resignation shall take effect on receipt by the Secretary, unless it states differently.

ARTICLE VI ELECTION OF DIRECTORS

6.1 The affairs of the Association shall be managed initially by a board of three (3) Directors as set forth in the Articles of Incorporation of the Association. The number of Directors shall never be less than three (3). The number of Directors may be increased by vote of the holders of more than one-half (1/2) of the total votes of the Association; provided there shall not exist more than nine (9) Directors. Directors must be members or their spouses; officers of a corporate member; or partners of a partnership member; or Managers of an LLC member.

6.2 Directors shall be elected at the annual meeting of members by a plurality of the votes entitled to be cast for directors which are present in person or by proxy. Each eligible voter shall be entitled to cast votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting. Not less than sixty (60) days before the annual meeting of the members, a nominating committee of five (5) members shall be appointed by the Board of Directors and the committee shall nominate one person for each directorship to be filled. Other members may nominate themselves if they provide notice to the Association of their intent to be a candidate at least 40 days prior to the Annual Meeting. No nominations may be made from the floor. If approved by the Board, the Association may conduct elections and other membership votes through an Internet-based online voting system if the requirements of Florida Statutes are met.

6.3 The members of the Board of Directors elected or appointed in accordance with the procedures set forth in this Article shall take office as of the date of the first meeting of the Board of Directors following the meeting of members at which they were elected.

6.4 Upon the turnover of the Association Director's shall be elected annually at the annual meeting.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 The Board of Directors has all power, authority, discretion and duties necessary for the administration and operation of the Association as contemplated by the Declaration, the Articles, and these Bylaws except as otherwise reserved or granted in the Declaration, the Articles, or these Bylaws.

7.2 The Board of Directors may enforce by legal means the provisions of the Declaration, the Articles, these Bylaws and Rules and Regulations for the use of the Common Areas. In the event that the Board of Directors determines that any member is in violation of any of the provisions of these documents, the Board, or its agent, shall notify the member of the nature of the violation. If the violation is not cured within five (5) days, or if the violation is repeated, the Board may levy reasonable fines of up to \$100.00 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the Lot or its occupant, licensee, or invitee to comply with any provision of the Declaration, the Bylaws or rules and regulations of the Association. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$1,000.00 in the aggregate. A fine of less than \$1,000.00 may not become a lien against a parcel.

7.3 The Association may also suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use the Common Areas and facilities for the failure of the owner of the Lot or its occupant, licensee, or invitee to comply with any provision of the Declaration, the Bylaws or the rules and regulations of the Association. This subsection does not apply to that portion of the Common Areas used to provide access or utility services to the Lot. A suspension may not impair the right of an owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

7.4 A fine or suspension under Subsections 7.2 and 7.3, above, may not be imposed without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If the Association imposes a fine or suspension, the Association must provide written notice of such fine or suspension by mail or hand delivery to the owner and, if applicable, to any tenant, licensee, or invitee of the owner. The member may be represented by counsel at any hearing.

7.5 If a member is more than 90 days delinquent in paying a monetary obligation due to the Association, the Association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use Common areas and facilities until the monetary obligation is paid in full. Any suspension under this Subsection must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Lot owner and, if applicable, the lot's occupant, licensee, or invitee by mail or hand delivery. This subsection does not apply to that portion of the Common Areas used to provide access or utility services to the parcel. A suspension may not impair the right of an owner or tenant of a Lot to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park. The notice and hearing requirements under Subsection 7.4 above, do not apply to a suspension imposed by this Subsection 7.5.

7.6 An Association may suspend the voting rights of a Lot or member for the nonpayment of any monetary obligation due to the Association that is more than 90 days delinquent. Any suspension under this Subsection must be approved at a properly noticed Board meeting. Upon approval, the Association must notify the Lot owner and, if applicable, the lot's occupant, licensee, or invitee by mail or hand delivery. A voting interest or consent right allocated to a lot or member which has been suspended by the Association may not be counted towards the total number of voting interests for any purpose, including, but not limited to, the number of voting interests necessary to constitute a quorum, the number of voting interests required to conduct an election, or the number of voting interests required to approve an action under Chapter 720, Florida Statutes or pursuant to the Hidden Harbor Estates documents. The notice and hearing requirements under Subsection 7.4, above, do not apply to a suspension imposed under this Subsection 7.6. The suspension ends upon full payment of all obligations currently due or overdue to the Association.

7.7 The Board of Directors has the power to adopt budgets and make assessments, to sue and expend assessments and other monies of the Association as necessary to carry out the powers and duties of the Association pursuant to the Declaration and these Bylaws.

7.8 The Board of Directors has the power to employ, dismiss, control and contract for personnel and contractors for the administration of the Association, including but not limited to manager, maintenance personnel, attorneys, accountants and other professional as the Board may determine.

7.9 The Board has the power to establish, adopt, amend and rescind reasonable Rules and Regulations relating to the administration of the Association and the operation of the Common Areas, subject to the Declaration and Bylaws. Any Rules or Regulations adopted by the Board may be changed or rescinded by the affirmative vote of not less than two-thirds (2/3) of the total votes entitled to be cast.

7.10 The Board has the power to create and to disband such committees as the Board determines is necessary or useful in the administration of the Association. The Board has the power to reasonably delegate the Board's authority to such committees, subject always to the provisions of the Declaration, the Articles, and these Bylaws. All committees of this Association shall keep records and conduct meetings in the same manner as is required of the Board of Directors, to the extent applicable. However, nothing contained in this section shall be deemed to restrict the authority of the President of this Association from appointing advisory committees not inconsistent with committees created by the Board of Directors or the members.

7.11 The duties of the Board of Directors include:

- (a) To keep a complete record of all its acts and corporate affairs.
- (b) To supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.
- (c) With reference to assessments of the Association:
 - (i) To fix the amount of the Individual Assessment against each member for each assessment period in accordance with the provisions of the Declaration, Articles of Incorporation and these Bylaws at least thirty days in advance of such date or period;
 - (ii) To prepare a roster of the members and assessments applicable thereto which shall be kept in the office of the association which shall be open to inspection by any members; and
 - (iii) To send written notice of each assessment to every member subject thereto.
- (d) To issue or cause an appropriate officer to issue, upon request by any member, a certificate in recordable form setting forth whether any assessment has been paid; and if not, the amount then due and owing. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- (e) To make payment of all taxes and assessments assessed against Association property, if any, real or personal.

(f) To pay all expenses incurred by the Association for repairs, maintenance, services, insurance and other operating expenses.

(g) To enforce by appropriate legal means the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, and any and all applicable laws, rules, and regulations.

ARTICLE VIII MEETING OF DIRECTORS

8.1 The organizational meeting of the newly elected Board of Directors, which shall also be the Board's annual meeting, shall be held within twenty (20) days of their election at such time and at such place as fixed by the Directors at the annual meeting of members at which they were elected.

8.2 Regular meetings of the Board of Directors shall be held at such time and as provided by a corporate resolution of the Board of Directors.

8.3 Special meetings of the Board of Directors shall be held when called by an officer of the Association or by any two directors.

8.4 Notice of regular or special meetings of the Board shall be given to each Director, personally or by mail, telephone, electronic transmission or facsimile, at least two days prior to the day named for each meeting. Each notice shall state the time, place and purpose of the meeting, unless such notice is waived.

8.5 The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as through made at a meeting duly held at the regular call and notice, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

8.6 A quorum at Director's meetings shall consist of a majority of the entire Board of Directors. The acts approved by majority of those present at a meeting at which a quorum is present shall constitute the act of the Board of Directors, except where the approval of a greater number of Directors is required by the Declaration or these Bylaws. The written joinder of a Director in the action of a meeting will constitute the concurrence of such Director for the purpose of determining necessary majorities on any action taken or to create a quorum.

8.7 Except for closed sessions authorized by Florida Statutes, meetings of the Board of Directors are open to all members. Notice of all meetings of the Board of Directors shall be given in accordance with Section 720.303(2)(c), Florida Statutes, as amended, i.e. at a minimum including the posting of Notice in a conspicuous place in the community at least 48 hours in advance of the meeting, except in an emergency, and including by electronic transmission; provided a member consents in writing to receiving notice by electronic transmission.

ARTICLE IX OFFICERS

9.1 The officers shall be a President, Vice-President, Secretary and a Treasurer, and such other officers as maybe elected in accordance with the Articles of Incorporation. The President shall be a

member of the Board of Directors. An individual may simultaneously hold more than one office so long as the President is not also the Secretary.

9.2 All of the officers of the Association shall be elected by the Board of Directors. If the election of such officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New officers may be created and filled thereafter as convenient. New officers may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his or her successor shall have been duly elected and qualified or until earlier resignation or removal.

9.3 A vacancy of any office because of death, resignation, or other termination of service may be filled by the Board of Directors for the unexpired portion of the term.

9.4 All officers hold office at the pleasure of the Board of Directors.

9.5 The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and shall sign all notes, leases, mortgages, deeds and other written instruments. The President may, but need not, be a required signatory on checks of the Association.

9.6 The Vice-President shall perform all the duties of the President in his absence. The Vice-President shall perform such other acts and duties as may be assigned by the Board of Directors.

9.7 The Secretary shall be ex officio the Secretary of the Board of Directors and shall record the votes and keep the minutes of all proceedings in a book to be kept for that purpose. He or she shall sign all certificates of membership; shall keep the records of the Association, and shall record in a book for that purpose the names of all of the members of the association together with each member's current address as registered by such member.

9.8 The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution by the Board of Directors, provided, however, that a resolution by the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of the budget adopted by the Board. The Treasurer may, but need not, be a required signatory on checks and notes of the Association.

9.9 The Treasurer, of the Treasurer's appointed agent, shall keep proper books of account, and shall prepare an annual budget, a statement of receipts and disbursements, and a balance sheet, and the same shall be available for inspection upon reasonable request of a member.

9.10 Check writing and ACH authorizations require signatures. If a Property Management company is in place, no checks or ACH authorizations will be written on behalf of the Association without the written approval of either two (2) Directors or one Director and the Association Manager.

ARTICLE X COMMITTEES

10.1 Following turnover of control of the Association to members other than the Developer, the standing committees of the Association shall be:

- (a) The Nominating Committee; and
- (b) The Maintenance (Landscape) Committee.

Unless otherwise provided herein, each committee shall consist of a chairperson and two or more members and shall include a member of the Board of Directors. The committee shall be appointed by the Board of Directors within thirty (30) days after each annual meeting of the Board of Directors, and the members of each committee shall serve until the succeeding committee members have been appointed.

10.2 The Nominating Committee shall have the duties and function pertaining to the nomination of members to the Board of Directors as prescribed in Article 6 of these Bylaws.

10.3 The Maintenance (Landscape) Committee shall advise the Board of Directors of all matters pertaining to the maintenance, repair or improvement of Common Areas as contemplated by the Declaration of those areas for which the Association is responsible to maintain as set forth in the Declaration and shall perform or see to the performance of such other functions as the Board, in its discretion, determines.

10.4 The Board of Directors may appoint such other committees from time to time as it deems desirable.

10.5 The committees appointed by the Board of Directors shall have power to appoint sub-committees from among their membership and may delegate to any such sub-committee any powers, duties, and functions.

10.6 It is the duty of each committee to receive complaints from members on any matter involving Association functions, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, director or officer of the Association which is further concerned with the matter presented.

ARTICLE XI ASSESSMENTS

11.1 The Association has the right to obtain funds with which to operate by assessment of its members in accordance with the provisions of the Declaration, the Articles of Incorporation and these Bylaws. Assessments not paid when due shall bear interest from the date when due until paid at the rate of eighteen (18%) percent per annum, or as set by the Board of Directors, and shall also result in the suspension of voting privileges during any period of such nonpayment. The Association may also charge a late fee equal to the greater of \$25.00 or five percent (5%) of the amount of the installment due. The method of Assessments and the manner of enforcing collection thereof shall be as set forth in the Declaration.

11.2 Upon every initial transfer of record title to a lot by Developer after the date of recording the Declaration, an Initial Capital Assessment shall be made by, or on behalf of, the purchaser to a separate working fund account of the Association. The Initial Capital Assessment required herein shall constitute an assessment against the lot and shall be subject to the same lien rights and other rights of collection applicable to other assessments.

11.3 Individual Assessments shall be made in advance on or before December 31st preceding the year for which the assessment is made. Such assessment shall be due in quarterly installments, which will be due on the first day of each quarter beginning as of the first day of the fiscal year for which the assessments are made, unless other payments are provided by the Board. If an Individual Assessment is not made as required, an assessment will be presumed to have been made in the amount of the last prior Individual Assessment.

11.4 Special Assessments may also be made from time to time by the Board as provided in the Declaration with Association approval where required.

11.5 The Association shall also have the power to levy Specific Assessments against a particular lot to (i) cover the costs, including the overhead and administrative costs of providing services to one or more lots upon request of the owner(s) thereof pursuant to any special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and (ii) cover costs incurred in bringing the lot into compliance with the Declaration, or costs incurred as a consequence of the conduct of the owner or occupants of the lot, their agents, contractors, employees, licenses, invitees or guests.

11.6 Upon default in payment of an assessment, the Board may elect to accelerate remaining installments due on any outstanding assessment. Such assessment will be considered accelerated ten days after delivery or receipt of written notice to or by the delinquent members, or twenty days after mailing of written notice by certified or registered mail, whichever occurs first.

11.7 Any property which becomes subject to assessment during the fiscal year shall be assessed on a pro rata basis for that year.

11.8 The Association may post lists of members who are delinquent in payment of assessments in such locations as the Board decides.

11.9 Within 10 business days after receiving a written or electronic request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, the association shall issue the estoppel certificate, in accordance with Chapter 720, Florida Statutes. A fee for the estoppel certificate generation will be collected on behalf of the Association. The fee amount will be determined by the Board pursuant to Florida Statutes.

ARTICLE XII FISCAL MANAGEMENT

The provisions of fiscal management of the Association, as set forth in the Declaration, Articles of Incorporation and Bylaws shall be supplemented by the following provisions:

12.1 The Individual Assessment roll, hereinafter called "Assessment Roll", shall be maintained in a set of accounting books in which there shall be an account for each member. The account shall designate the name and address of the member, the amount of each assessment, the dates in which such assessments become due, and the amounts paid on the account and the balance due prior to assessments.

12.2 The fiscal year of the Association shall begin on January 1. The Board of Directors shall adopt a budget for each fiscal year which shall contain estimates of the costs of performing the function of the Association and which shall include, but not be limited to, the following items:

(a) Regular budget, which shall include provisions for the accomplishment of those objectives contemplated by the Declaration, Articles of Incorporation and these Bylaws.

(b) Surface Water Management budget, which shall pay for the operation and maintenance of the water management system serving the lots.

(c) Proposed Individual Assessment against each member as set forth in the Declaration.

12.3 Copies of the proposed budgets and proposed assessments shall be transmitted to each member at least thirty (30) days prior to the beginning of the year for which the budgets are made. If the budgets are subsequently amended before the assessments are made, a copy of any amended budget shall be furnished to each member. Delivery of a copy of such budget or amended budget shall not be

considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the rights of the Board of Directors, at any time in their sole discretion, to levy any Special Assessment in the event that the budget originally adopted appears to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

12.4 The depository of the Association shall be a Federal Deposit Insurance Corporation (FDIC) member bank or banks as designated by the Directors and in which the monies of the Association shall be deposited. Withdrawal of money from such accounts shall be only by check, ACH, or wire transfer signed or presented by such persons as are authorized by the Board of Directors.

12.5 Insurance policies or fidelity bonds may be required by the Board of Directors from all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums of such bonds shall be paid by the Association and be a Common Expense of the Association.

ARTICLE XIII OFFICIAL SEAL

The Association shall have an official seal which shall be circular in form bearing the name of the Association, the words "Florida" the words "Corporation Not For Profit" and the year of incorporation.

ARTICLE XIV BOOKS AND RECORDS

The books, records and other papers of the Association shall be available at the Association's office and subject to the inspection of any of the Association members during regular business hours, and subject to the provisions of Chapter 720, Florida Statutes.

ARTICLE XV AMENDMENTS

As provided in the Articles of Incorporation, these Bylaws may be altered, amended or repealed by an affirmative vote of a majority of all the members present in person or by proxy at a duly constituted regular or special meeting of the members provided that the proposed alteration, amendment or repeal is contained in the notice of such meeting.

ARTICLE XVI NOTICE; RECORDS

16.1 Upon written request to the Association, Identifying the name and address of the holder or insurer and the property and address of any property encumbered or insured, any mortgage holder or insurer is entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of the property.

(b) Any sixty (60) day delinquency in the payment of assessments or charges owed by a member on the property on which it holds the mortgage.

(c) A lapse or cancellation of any insurance policy or fidelity bond maintained by the Association.

16.2 The Association is required to make available to members and lenders, and to holders of any first mortgage, current copies of the Declaration, Articles, Bylaws, other rules concerning the Lots and Common Areas and the books, records, and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

16.3 Any holder of a first mortgage is entitled, upon written request, to a financial statement of the Association for the immediately preceding fiscal year.

ARTICLE XVII CONFLICTS

Any conflict between these Bylaws and the Declaration shall be governed by the Declaration.

The foregoing were adopted as the AMENDED BYLAWS of HIDDEN HARBOR ESTATES PROPERTY OWNERS' ASSOCIATION, INC., a corporation not for profit under the laws of the State of Florida on this ____ day of _____, 2022.

EXHIBIT "D"
OF AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS, AND EASEMENTS

SOUTH FLORIDA WATER MANAGEMENT PERMIT



**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
ENVIRONMENTAL RESOURCE PERMIT NO. 36-03962-P
DATE ISSUED: May 30, 2019**

PERMITTEE: S D HIDDEN HARBOR L L C
2339 PROFESSIONAL CIRCLE SUITE 101
NAPLES, FL 34119

PROJECT DESCRIPTION: This Environmental Resource Permit Modification allows for an increased maximum 820 square foot (SF) total footprint for combined dock and boatlift/over-water structure, for the docking facilities that have been previously authorized within the onsite borrow pit for the residential development known as Hidden Harbor.

PROJECT LOCATION: LEE COUNTY, SEC 7 TWP 46S RGE 25E

PERMIT DURATION: See Special Condition No:1.

This is to notify you of the District's agency action for Permit Application No. 180626-10, dated June 26, 2018. This action is taken pursuant to the provisions of Chapter 373, Part IV, Florida Statutes (F.S).

Based on the information provided, District rules have been adhered to and an Environmental Resource Permit is in effect for this project subject to:

1. Not receiving a filed request for a Chapter 120, Florida Statutes, administrative hearing.
2. the attached 18 General Conditions (See Pages : 2 - 4 of 8),
3. the attached 18 Special Conditions (See Pages : 5 - 8 of 8) and
4. the attached 3 Exhibit(s)

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed agency action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the "Notice of Rights," we will assume that you concur with the District's action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT this written notice has been mailed or electronically transmitted to the Permittee (and the persons listed in the attached distribution list) this 30th day of May, 2019, in accordance with Section 120.60(3), F.S. Notice was also electronically posted on this date through a link on the home page of the District's website (my.sfwmd.gov/ePermitting).

BY: Melissa M. Roberts
Melissa M. Roberts, P.E.
Regulatory Administrator
Fort Myers Service Center

GENERAL CONDITIONS

1. All activities shall be implemented following the plans, specifications and performance criteria approved by this permit. Any deviations must be authorized in a permit modification in accordance with rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under chapter 373, F.S.
2. A complete copy of this permit shall be kept at the work site of the permitted activity during the construction phase, and shall be available for review at the work site upon request by the Agency staff. The permittee shall require the contractor to review the complete permit prior to beginning construction.
3. Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be installed immediately prior to, and be maintained during and after construction as needed, to prevent adverse impacts to the water resources and adjacent lands. Such practices shall be in accordance with the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation, June 2007), and the Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008), which are both incorporated by reference in subparagraph 62-330.050(9)(b)5., F.A.C., unless a project-specific erosion and sediment control plan is approved or other water quality control measures are required as part of the permit.
4. At least 48 hours prior to beginning the authorized activities, the permittee shall submit to the Agency a fully executed Form 62-330.350(1), "Construction Commencement Notice," (November 16, 2016), (<http://www.flrules.org/Gateway/reference.asp?No=Ref-02505>), incorporated by reference herein, indicating the expected start and completion dates. A copy of this form may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., and shall be submitted electronically or by mail to the Agency. However, for activities involving more than one acre of construction that also require a NPDES stormwater construction general permit, submittal of the Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities, DEP Form 62-621.300(4)(b), shall also serve as notice of commencement of construction under this chapter and, in such a case, submittal of Form 62-330.350(1) is not required.
5. Unless the permit is transferred under rule 62-330.340, F.A.C., or transferred to an operating entity under rule 62-330.310, F.A.C., the permittee is liable to comply with the plans, terms, and conditions of the permit for the life of the project or activity.
6. Within 30 days after completing construction of the entire project, or any independent portion of the project, the permittee shall provide the following to the Agency, as applicable:
 1. For an individual, private single-family residential dwelling unit, duplex, triplex, or quadruplex - "Construction Completion and Inspection Certification for Activities Associated with a Private Single-Family Dwelling Unit" [Form 62-330.310(3)]; or
 2. For all other activities - "As-Built Certification and Request for Conversion to Operation Phase" [Form 62-330.310(1)].
 3. If available, an Agency website that fulfills this certification requirement may be used in lieu of the form.
7. If the final operation and maintenance entity is a third party:
 1. Prior to sales of any lot or unit served by the activity and within one year of permit issuance, or within 30 days of as-built certification, whichever comes first, the permittee shall submit, as applicable, a copy of the operation and maintenance documents (see sections 12.3 thru 12.3.4 of Volume I) as filed with the Florida Department of State, Division of Corporations, and a copy of any easement, plat, or deed restriction needed to operate or maintain the project, as recorded with the Clerk of the Court in the County in which

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the activity is located.

2. Within 30 days of submittal of the as-built certification, the permittee shall submit "Request for Transfer of Environmental Resource Permit to the Perpetual Operation and Maintenance Entity" [Form 62-330.310(2)] to transfer the permit to the operation and maintenance entity, along with the documentation requested in the form. If available, an Agency website that fulfills this transfer requirement may be used in lieu of the form.
8. The permittee shall notify the Agency in writing of changes required by any other regulatory agency that require changes to the permitted activity, and any required modification of this permit must be obtained prior to implementing the changes.
9. This permit does not:
 1. Convey to the permittee any property rights or privileges, or any other rights or privileges other than those specified herein or in chapter 62-330, F.A.C.;
 2. Convey to the permittee or create in the permittee any interest in real property;
 3. Relieve the permittee from the need to obtain and comply with any other required federal, state, and local authorization, law, rule, or ordinance; or
 4. Authorize any entrance upon or work on property that is not owned, held in easement, or controlled by the permittee.
10. Prior to conducting any activities on state-owned submerged lands or other lands of the state, title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, the permittee must receive all necessary approvals and authorizations under chapters 253 and 258, F.S. Written authorization that requires formal execution by the Board of Trustees of the Internal Improvement Trust Fund shall not be considered received until it has been fully executed.
11. The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities that may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any project authorized by the permit.
12. The permittee shall notify the Agency in writing:
 1. Immediately if any previously submitted information is discovered to be inaccurate; and
 2. Within 30 days of any conveyance or division of ownership or control of the property or the system, other than conveyance via a long-term lease, and the new owner shall request transfer of the permit in accordance with rule 62-330.340, F.A.C. This does not apply to the sale of lots or units in residential or commercial subdivisions or condominiums where the stormwater management system has been completed and converted to the operation phase.
13. Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the project or activities to ensure conformity with the plans and specifications authorized in the permit.
14. If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, stone tools, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities involving subsurface disturbance in the vicinity of the discovery. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section (DHR), at (850)245-6333, as well as the appropriate permitting agency office. Project activities shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and the proper authorities notified in accordance with section 872.05, F.S. For project

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activities subject to prior consultation with the DHR and as an alternative to the above requirements, the permittee may follow procedures for unanticipated discoveries as set forth within a cultural resources assessment survey determined complete and sufficient by DHR and included as a specific permit condition herein.

15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under rule 62-330.201, F.A.C., provides otherwise.
16. The permittee shall provide routine maintenance of all components of the stormwater management system to remove trapped sediments and debris. Removed materials shall be disposed of in a landfill or other uplands in a manner that does not require a permit under chapter 62-330, F.A.C., or cause violations of state water quality standards.
17. This permit is issued based on the applicant's submitted information that reasonably demonstrates that adverse water resource-related impacts will not be caused by the completed permit activity. If any adverse impacts result, the Agency will require the permittee to eliminate the cause, obtain any necessary permit modification, and take any necessary corrective actions to resolve the adverse impacts.
18. A Recorded Notice of Environmental Resource Permit may be recorded in the county public records in accordance with subsection 62-330.090(7), F.A.C. Such notice is not an encumbrance upon the property.

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1. The construction phase of this permit shall expire on May 30, 2024.
2. Operation and maintenance of the stormwater management system and approved docking facilities shall be the perpetual responsibility of HIDDEN HARBOR ESTATES PROPERTY OWNERS' ASSOCIATION, INC. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.
3. Discharge Facilities: Through Previously Permitted Facilities
4. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
5. Prior to (August 1, 2019) in accordance with the work schedule attached as Exhibit No. 3.2, the permittee shall submit the following via ePermitting or to the Environmental Compliance staff at the local District office:

-One certified copy of the amended recorded restrictive covenant document as shown in Exhibit No. 3.0 and third amendment to the declaration of covenants, restrictions, and easements for Hidden Harbor Estates Property Owners' Association, Inc. as shown in Exhibit No. 3.1.

The original restrictive covenant is recorded in the Lee County, Florida Public Records as Instrument No. 2016000193927. The amended recorded restrictive covenant shall utilize the form attached as Exhibit No. 3.0, and the amendment to the Association documents shall utilize the form attached as Exhibit 3.1. These exhibits may not be modified. The restrictive covenant must be free of encumbrances or interests which the District states are contrary to the intent of the restrictive covenant. In the event it is later determined that there are encumbrances or interests in the restrictive covenant which the District determines are contrary to the intent of the restrictive covenant, the permittee shall be required to provide release or subordination of such encumbrances or interests.¹⁹

6. The permittee shall comply with the following conditions intended to protect manatees and marine turtles from direct project effects:
 - a. All personnel associated with the project shall be instructed about the presence of marine turtles, manatees and manatee speed zones, and the need to avoid collisions with and injuries to manatees. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
 - b. All vessels associated with the construction project shall operate at "Idle Speed/No Wake" at all times while in the immediate area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
 - c. Siltation or turbidity barriers shall be made of material in which manatees and marine turtles cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee and marine turtle entanglement or entrapment. Barriers must not impede manatee movement.
 - d. All on-site project personnel are responsible for observing water-related activities for the presence of

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marine turtles and manatee(s). All in-water operations, including vessels, must be shutdown if a marine turtle or manatee(s) comes within 50 feet of the operation. Activities will not resume until the animal(s) have moved beyond the 50-foot radius of the project operation, or until 30 minutes elapses if the animal(s) has not reappeared within 50 feet of the operation. Animals must not be herded away or harassed into leaving.

e. Any collision with or injury to a marine turtle or manatee shall be reported immediately to the FWC Hotline at 1-888-404-3922. Collision and/or injury should also be reported to the U.S. Fish and Wildlife Service in Jacksonville (1-904-731-3336) for north Florida or Vero Beach (1-772-562-3909) for south Florida, and to FWC at ImperiledSpecies@myFWC.com.

f. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Awareness signs that have already been approved for this use by the Florida Fish and Wildlife Conservation Commission (FWC) must be used. One sign measuring at least 3 ft. by 4 ft. which reads Caution: Manatee Area must be posted. A second sign measuring at least 8 1/2" by 11" explaining the requirements for "Idle Speed/No Wake" and the shut down of in-water operations must be posted in a location prominently visible to all personnel engaged in water-related activities. These signs can be viewed at MyFWC.com/manatee. Questions concerning these signs can be sent to FWC at ImperiledSpecies@myFWC.com.

7. Prior to certification of construction completion, permanent manatee educational signs must be installed by the permittee. No later than 60 days after construction commencement, permanent manatee educational signs must be installed by the permittee. In the event the signs fade, become damaged or outdated, they must be replaced and maintained for the life of the facility. The on-site locations and types of signs must be acceptable to the Florida Fish and Wildlife Conservation Commission, which should be contacted at ImperiledSpecies@myfwc.com. The types of signs, sign vendors, and the process for FWC approval can be found at: <http://www.myfwc.com/wildlifehabitats/managed/manatee/signs/>.
8. At least one person shall be designated as a manatee observer when in-water work is being performed. That person shall have experience in manatee observation, be approved by FWC two weeks before the beginning of construction, and be equipped with polarized sunglasses to aid in observation. The manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within 50 feet of any in-water construction activity. Movement of a work barge, other associated vessels, or any in-water work shall not be performed after sunset, when the possibility of spotting manatees is negligible.
9. Due to the proximity of this project to areas of known manatee concentrations, all work conducted waterward of the existing shoreline during the months of December, January and February shall be subject to the following conditions:
 - a) The Imperiled Species Management Section shall be notified one week prior to the commencement of the work;
 - b) at least one person shall be designated as a manatee observer at each site when in-water work is being performed. the manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within 50 feet of any in-water construction activity. Movement of a work barge, other associated vessels, or any in-water work shall not be performed after sunset, when the possibility of spotting manatees is negligible; and;

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c) the permittee shall ensure that the contractor maintains a log detailing sightings, collisions, or injuries to manatees should they occur during the contract period. following project completion, the logs shall be submitted to the Imperiled Species Management Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600;

10. Boat mooring at the docking facilities shall be limited to a total of 53 docks/slips including dry storage with only one motorized vessel including but not limited to boats, jet skis and other personal watercraft per dock/slip. Any docks with more than one motorized vessel must remove the additional vessel.

One boat dock/slip is allowed for each lot for Lots 1-52 and one dock/slip is allowed on Tract "B" (Common Area/Amenity Area) located west of Lot 1. Lots 53-59 abut or are adjacent to Ten Mile Canal and are not authorized for docks/slips. Any number of non-motorized vessels, such as sailboats, paddle boats, canoes, kayaks and model sized remote control boats are permitted to use in the Harbor/borrow pit.

1. Docks/Over Water Improvements are not to exceed 820 square feet over water and must maintain a minimum 5-ft setback from the property lines as shown on Exhibit No. 2.0. Any docks that exceed the 820 SF threshold must be reduced in size to comply with the permit.

2. No docks shall be constructed along or within the Ten Mile Canal.

3. There are no vessel size and horsepower restrictions. However, the vessel size will be determined by the controlling depth at the entrance of the Harbor (borrow pit) as shown Exhibit No. 2.0 as well as the controlling depths of the Mullock Creek area. The vessel must provide clearance of at least 1-ft above the submerged bottom at all times.

11. No fueling or fish cleaning facilities shall be installed or operated on the docking facilities that are authorized herein for the life of the facility.
12. No liveaboards shall be allowed to dock at the docking facilities authorized by this permit for the life of the facility. A liveaboard shall be defined as a vessel docked at the facility and inhabited by a person or persons for any five (5) consecutive days or a total of ten (10) days within a 30 day period.
13. The docking facilities authorized by this permit are for the private use of residents of the Hidden Harbor Estates development. The permittee shall ensure that the docking facilities are not subleased for revenue generating or liveaboard purposes.
14. Activities associated with the implementation of the mitigation, monitoring and maintenance plan(s) shall be completed in accordance with the work schedule attached as Exhibit No. 3.2. Any deviation from these time frames must be coordinated with the District's Environmental Resource Compliance staff, and may require a minor modification to this permit. Such requests must be made in writing and shall include (1) reason for the change, (2) proposed start/finish and/or completion dates; and (3) progress report on the status of the project development or mitigation effort.
15. Within 30 days of the completion of construction of any new dock/boatlift or any reconfiguration of the permitted docking/over-water improvements not to exceed 820 SF with a minimum 5-ft setback from each property line, an as-built survey of the constructed docking facilities prepared by a surveyor registered in the State of Florida, shall be submitted to the Environmental Resource Compliance staff in the Fort Myers Service Center. It is the responsibility of the Hidden Harbor Estates Property Owners' Association, Inc. to submit this information to the District.
16. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.

SPECIAL CONDITIONS

17. The exhibits and special conditions in this permit apply only to this application. They do not supersede or delete any requirements for other applications covered in Permit No. 36-03962-P unless otherwise specified herein.
18. The following are exhibits to this permit. Exhibits noted as incorporated by reference are available on the District's ePermitting website (<http://my.sfwmd.gov/ePermitting>) under this application number.
 - Exhibit No. 1.0 Location Map
 - Exhibit No. 2.0 Updated Dock Plan
 - Exhibit No. 2.1 Dock As-built Survey
 - Exhibit No. 3.0 Amended Restrictive Covenant
 - Exhibit No. 3.1 Third Amendment of POA
 - Exhibit No. 3.2 Work Schedule
 - Exhibit No. 3.3 FWC Correspondence

NOTICE OF RIGHTS

As required by Sections 120.569 and 120.60(3), Fla. Stat., the following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all of the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a SFWMD decision which affects or may affect their substantial interests shall file a petition for hearing with the Office of the District Clerk of the SFWMD, in accordance with the filing instructions set forth herein, within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: (1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or (2) within 14 days of service of an Administrative Order pursuant to Section 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of written notice through mail, electronic mail, or posting that the SFWMD has or intends to take final agency action, or publication of notice that the SFWMD has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

If the District takes final agency action which materially differs from the noticed intended agency decision, persons who may be substantially affected shall, unless otherwise provided by law, have an additional Rule 28-106.111, Fla. Admin. Code, point of entry.

Any person to whom an emergency order is directed pursuant to Section 373.119(2), Fla. Stat., shall comply therewith immediately, but on petition to the board shall be afforded a hearing as soon as possible.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for an extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

FILING INSTRUCTIONS

A petition for administrative hearing must be filed with the Office of the District Clerk of the SFWMD. Filings with the Office of the District Clerk may be made by mail, hand-delivery, or e-mail. Filings by facsimile will not be accepted. A petition for administrative hearing or other document is deemed filed upon receipt during normal business hours by the Office of the District Clerk at SFWMD headquarters in West Palm Beach, Florida. The District's normal business hours are 8:00 a.m. – 5:00 p.m., excluding weekends and District holidays. Any document received by the Office of the District Clerk after 5:00 p.m. shall be deemed filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the District Clerk, 3301 Gun Club Road, West Palm Beach, Florida 33406.

- Filings by hand-delivery must be delivered to the Office of the District Clerk. Delivery of a petition to the SFWMD's security desk does not constitute filing. It will be necessary to request that the SFWMD's security officer contact the Office of the District Clerk. An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by e-mail must be transmitted to the Office of the District Clerk at clerk@sfwmd.gov. The filing date for a document transmitted by electronic mail shall be the date the Office of the District Clerk receives the complete document. A party who files a document by e-mail shall (1) represent that the original physically signed document will be retained by that party for the duration of the proceeding and of any subsequent appeal or subsequent proceeding in that cause and that the party shall produce it upon the request of other parties; and (2) be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed.

INITIATION OF AN ADMINISTRATIVE HEARING

Pursuant to Sections 120.54(5)(b)4. and 120.569(2)(c), Fla. Stat., and Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, SFWMD file number or any other SFWMD identification number, if known.
2. The name, address, any email address, any facsimile number, and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

MEDIATION

The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401–.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to Section 120.68, Fla. Stat., and in accordance with Florida Rule of Appellate Procedure 9.110, a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal with the Office of the District Clerk of the SFWMD in accordance with the filing instructions set forth herein within 30 days of rendition of the order to be reviewed, and by filing a copy of the notice with the clerk of the appropriate district court of appeal.

Last Date For Agency Action: July 19, 2019

INDIVIDUAL ENVIRONMENTAL RESOURCE PERMIT STAFF REPORT

Project Name: Hidden Harbor Docks

Permit No.: 36-03962-P

Application No.: 180626-10

Application Type: Environmental Resource (Construction/Operation Modification)

Location: Lee County, S7/T46S/R25E

Permittee : S D Hidden Harbor L L C

Operating Entity : Hidden Harbor Estates Property Owners' Association, Inc.

Project Area: 1.00 acres

Permit Area: 54.67 acres

Project Land Use: Residential

Drainage Basin: TIDAL CALOOSA HATCHEE

Sub Basin: Ten Mile Canal

Receiving Body: Existing Lake

Class: CLASS III

Special Drainage District: NA

Conservation Easement To District : Yes

Number Of Boat Slips : 53

Sovereign Submerged Lands: No

PROJECT SUMMARY:

This Environmental Resource Permit Modification authorizes an increase in the allowable total square footage of dock/boat lift area for the lots approved to have docks within the borrow pit for a project known as Hidden Harbor.

This modification allows for a maximum 820 square foot (SF) footprint for docks and boatlift/over-water improvement, for the docking facilities that have been authorized within the onsite borrow pit. No changes to the surface water management system or number of vessels are authorized. The updated site/dock plan is attached as Exhibit 2.0 and an as-built survey of the current site docking facility conditions is attached as Exhibit No. 2.1.

Issuance of this permit constitutes certification of compliance with state water quality standards in accordance with Rule 62-330.062 Florida Administrative Code (F.A.C.).

PROJECT EVALUATION:

PROJECT SITE DESCRIPTION:

Hidden Harbor is located west of U.S. 41 and east of the Ten Mile Canal in Fort Myers, Lee County, Florida. The only access to the site is from a 50-foot wide improved right-of-way off of Pharmacy Road on the west side of U.S. 41. Hidden Harbor is surrounded by residential development on all sides and abuts Ten Mile Canal to the west. The opening to Ten Mile Canal is the only water access from the site to Estero Bay and the Gulf of Mexico. A location map is attached as Exhibit No. 1.0.

Hidden Harbor was previously permitted under Permit No. 36-03962-P and currently includes an access and internal roads, three control structures, and the central tidal lake/borrow pit.

BACKGROUND:

The Hidden Harbor residential and docking facility was originally permitted in 2001 (Permit No. 36-03962-P, Application No. 991011-13) with three independent basins (A, B, C/D) and a discharge rate of 51.4 cfs. Several modifications have occurred to this permit and currently the entrance road and internal roadways, three control structures, the retaining wall and the central lake/borrow pit have been completed.

The original permit (Application No. 991011-13) did not allow for any docking facilities due to endangered species concerns regarding the West Indian manatee (*Trichechus manatus*). Application No. 080506-17 authorized the construction of 53 docks, with a maximum square footage of 220 square feet. Application No. 150204-19 authorized site plan changes and the use of a restrictive covenant along the shoreline to enforce the permitted restrictions for the docking facilities. Application No. 160517-17 authorized the removal of vessel size and horsepower restrictions on the vessels utilizing the harbor/borrow pit.

WATER QUALITY :

No changes to the previously permitted dry detention system are proposed under this application. Therefore, no additional water quality treatment volume is required for Hidden Harbor.

Fish And Wildlife Issues:

The project site does contain preferred habitat for wetland-dependent endangered or threatened wildlife species or species of special concern; specifically, the borrow pit is a warm-water refuge for the West Indian manatee (*Trichechus manatus*). The presence of manatees at the project site was addressed during the review of Application No. 080506-17, which authorized 53 docks within the borrow pit for the upland single-family lots. A restrictive covenant has been placed over the project site to preclude any future additional docks/slips (Instrument No. 2016000193927 in the Lee County Public Records) and will be amended to reflect the changes authorized in this permit modification (Exhibit No. 3.0). Provisions have been included in the homeowners association documents as Exhibit F "Harbor and Vessel Rules and Restrictions" regarding the docks/slips including restrictions on the number of docks as well as manatee educational requirements for residents (Exhibit No. 3.1). All of these requirements were established under the prior permits for this site. Additionally, comments were received from the Florida Fish and Wildlife Commission (FWC) during the review of Application No. 160517-17 concurring with the removal of the boat size and horsepower restrictions based upon a report conducted by the applicant and submitted FWC characterizing the vessels currently utilizing Ten Mile Canal and Mullock Creek. The District also received comments from FWC on November 9, 2018 stating that the increased boatlift size for potentially larger vessels will not significantly impact manatees as long as the manatee protective measures in the permit are followed (Exhibit No. 3.3). Please refer to the Legal Issues section of this staff report and Special Conditions Nos. 5 through 15.

This permit does not relieve the applicant from complying with all applicable rules and any other agencies'

requirements if, in the future, endangered/threatened species or species of special concern are discovered on the site.

LEGAL ISSUES:

The applicant will be required to record an amended Restrictive Covenant to update Exhibit B (Exhibit No. 3.0) and record the third amendment to the Hidden Harbor Estates Property Owners' Association, Inc. (POA) documents (Exhibit No. 3.1) in the Lee County Public Records. Please refer to the work schedule attached as Exhibit No. 3.2 and Special Condition No. 5. The restrictive covenant precludes the future development of any additional docks or structures within the project site and outlines restrictions on the number and size of the dock/over-water improvements, number of motorized vessels, and other watercraft usage.

The total number of boat docks/over-water improvements not to exceed 820 SF over water with a minimum 5-ft setback from each side of the property line, inclusive of all shoreline and upland storage, shall be limited to fifty-three (53), with only one motorized vessel to be moored at each dock/overwater improvement at any given time. Motorized vessels include but are not limited to boats, wave runners and jet skis, or other personal watercraft. Specifically, one boat dock/over water improvement is allowed for each lot for Lots 1-52 and one dock/slip is allowed on Tract "B" (Common Area/Ammenity Area) located west of Lot 1. Lots 53-59 abut or are adjacent to Ten Mile Canal and are not authorized for docks/slips. However, any number of non-motorized vessels, such as sailboats, paddle boats, canoes, kayaks and model sized remote control boats are permitted to use the Harbor/borrow pit. Any boat covers or other cover structures for the docks/over-water improvements cannot overhang to exceed the 820 SF threshold. Boat covers or other cover structures for the docks/over-water improvements are not regulated by this permit unless it exceeds the 820 SF threshold. It is the responsibility of the POA to approve the design of such covers/cover structures. Any docks/over-water improvements that exceed the 820 SF maximum threshold as shown on Exhibit No. 2.1 must be reduced in size to comply with the permit. Additionally, any docks mooring more than one motorized vessel must remove the additional vessel. An as-built survey of the newly constructed or any reconfigurations of the docks/over-water improvements prepared by a surveyor registered in the State of Florida, will be submitted to the Environmental Resource Compliance staff in the Fort Myers Service Center to demonstrate compliance with the permit (Special Condition No. 15). Some of the docks/over-water improvements extend into the harbor (common area, Tract L), beyond individual property lines. Item No. 4 of the third amendment to the POA documents grants an easement in favor of the owner of each dwelling for any encroachments into the harbor beyond their property lot lines (Exhibit No. 3.1). The updated docking plan for the community and as-built survey of the current site docking conditions are attached as Exhibit Nos. 2.0 and 2.1, respectively.

Although there are no vessel size and horsepower restrictions, the vessels that utilize the harbor will be determined by the controlling depth at the entrance of the harbor (borrow pit) as shown Exhibit No. 2.0 as well as the controlling depths of the Mullock Creek area. The vessel must provide clearance of at least 1-ft above the submerged bottom at all times (Special Condition No. 10).

CERTIFICATION, OPERATION, AND MAINTENANCE:

Pursuant to Chapter 62-330.310 Florida Administrative Code (F.A.C.), Individual Permits will not be converted from the construction phase to the operation phase until construction completion certification of the project is submitted to and accepted by the District. This includes compliance with all permit conditions, except for any long term maintenance and monitoring requirements. It is suggested that the permittee retain the services of an appropriate professional registered in the State of Florida for periodic observation of construction of the project.

For projects permitted with an operating entity that is different from the permittee, it should be noted that until the construction completion certification is accepted by the District and the permit is transferred to an acceptable operating entity pursuant to Sections 12.1-12.3 of the Applicant's Handbook Volume I and

Section 62-330.310, F.A.C., the permittee is liable for operation and maintenance in compliance with the terms and conditions of this permit.

In accordance with Section 373.416(2), F.S., unless revoked or abandoned, all stormwater management systems and works permitted under Part IV of Chapter 373, F.S., must be operated and maintained in perpetuity.

The efficiency of stormwater management systems, dams, impoundments, and most other project components will decrease over time without periodic maintenance. The operation and maintenance entity must perform periodic inspections to identify if there are any deficiencies in structural integrity, degradation due to insufficient maintenance, or improper operation of projects that may endanger public health, safety, or welfare, or the water resources. If deficiencies are found, the operation and maintenance entity will be responsible for correcting the deficiencies in a timely manner to prevent compromises to flood protection and water quality. See Section 12.4 of Applicant's Handbook Volume I for Minimum Operation and Maintenance Standards.

RELATED CONCERNS:

Water Use Permit Status:

The applicant has indicated that a groundwater well will be used as a source for irrigation water for the existing permitted residential development. Water Use Permit No.36-06821-W has been issued for the project and expires on October 6, 2028.

The applicant has indicated that dewatering is not required for construction of this project.

This permit does not release the permittee from obtaining all necessary Water Use authorization(s) prior to the commencement of activities which will require such authorization, including construction dewatering and irrigation.

CERP:

The proposed project is not located within or adjacent to a Comprehensive Everglades Restoration Project component.

Potable Water Supplier:

Lee County Utilities.

Waste Water System/Supplier:

Lee County Utilities.

Right-Of-Way Permit Status:

A District Right-of-Way Permit is not required for this project.

Historical/Archeological Resources:

During the review of a previous permit modification (Application No. 160517-17), the District has received correspondence dated June 17, 2016 from the Florida Department of State, Division of Historical Resources. The correspondence indicated that no significant archaeological or historical resources are recorded in the project area and the project is therefore unlikely to have an effect upon any such properties. However, the agency requested that a special condition be added to the permit with regards to fortuitous finds and prehistoric or historic artifacts. Please refer to General Condition 15.

This permit does not release the permittee from compliance with any other agencies' requirements in the event that historical and/or archaeological resources are found on the site.

DEO/CZM Consistency Review:

The issuance of this permit constitutes a finding of consistency with the Florida Coastal Management Program.

Third Party Interest:

The District received correspondence from interested parties expressing concerns regarding the over-water structures and protected species concerns. Please refer to the permit file in ePermitting to review the correspondence. The parties which expressed concern are being copied on the permit.

Enforcement:

There has been no enforcement activity associated with this application.

STAFF REVIEW:

DIVISION APPROVAL:

NATURAL RESOURCE MANAGEMENT:



Laura Layman

DATE: 5/30/19

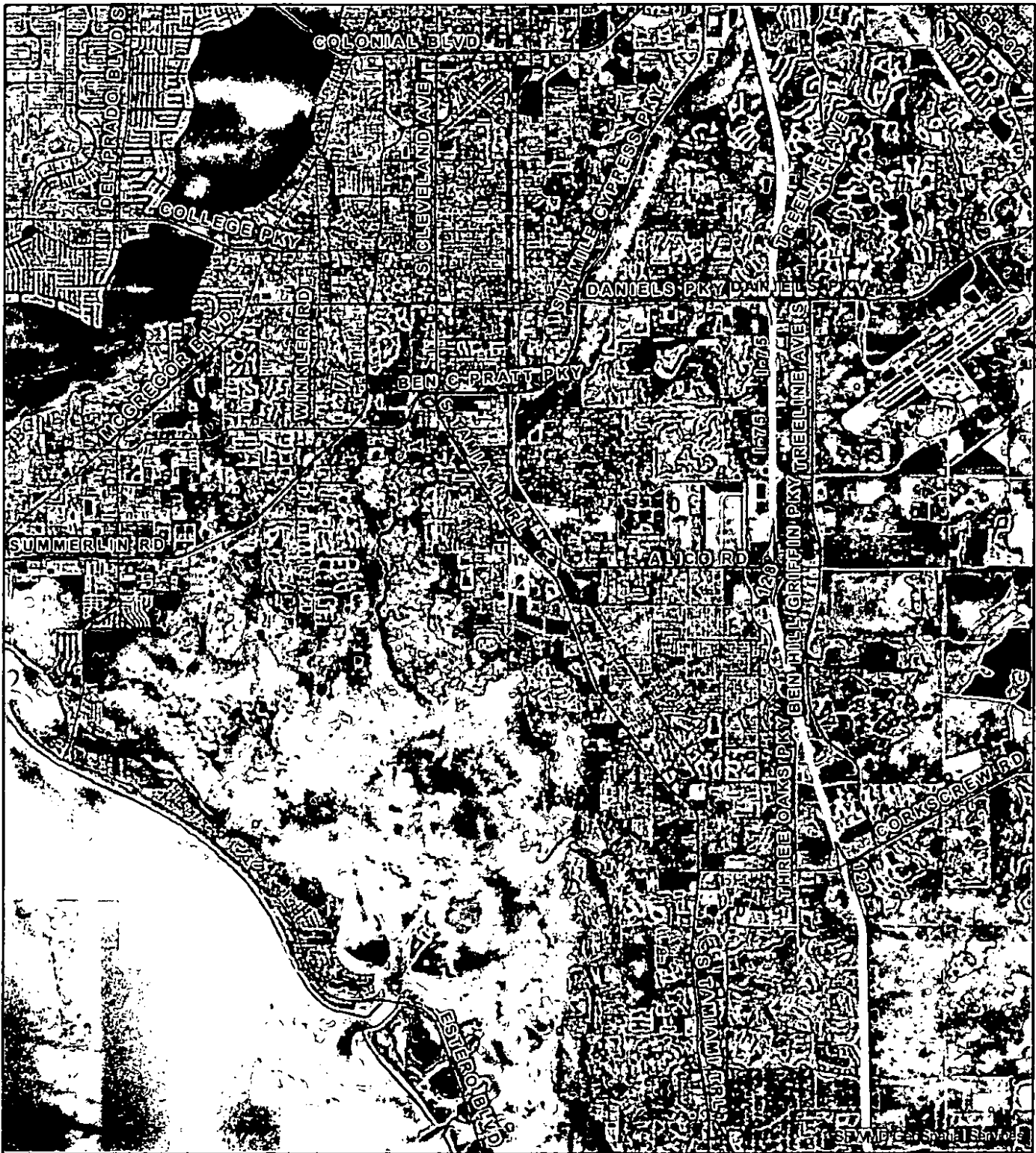

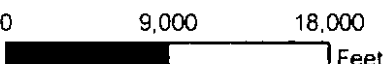
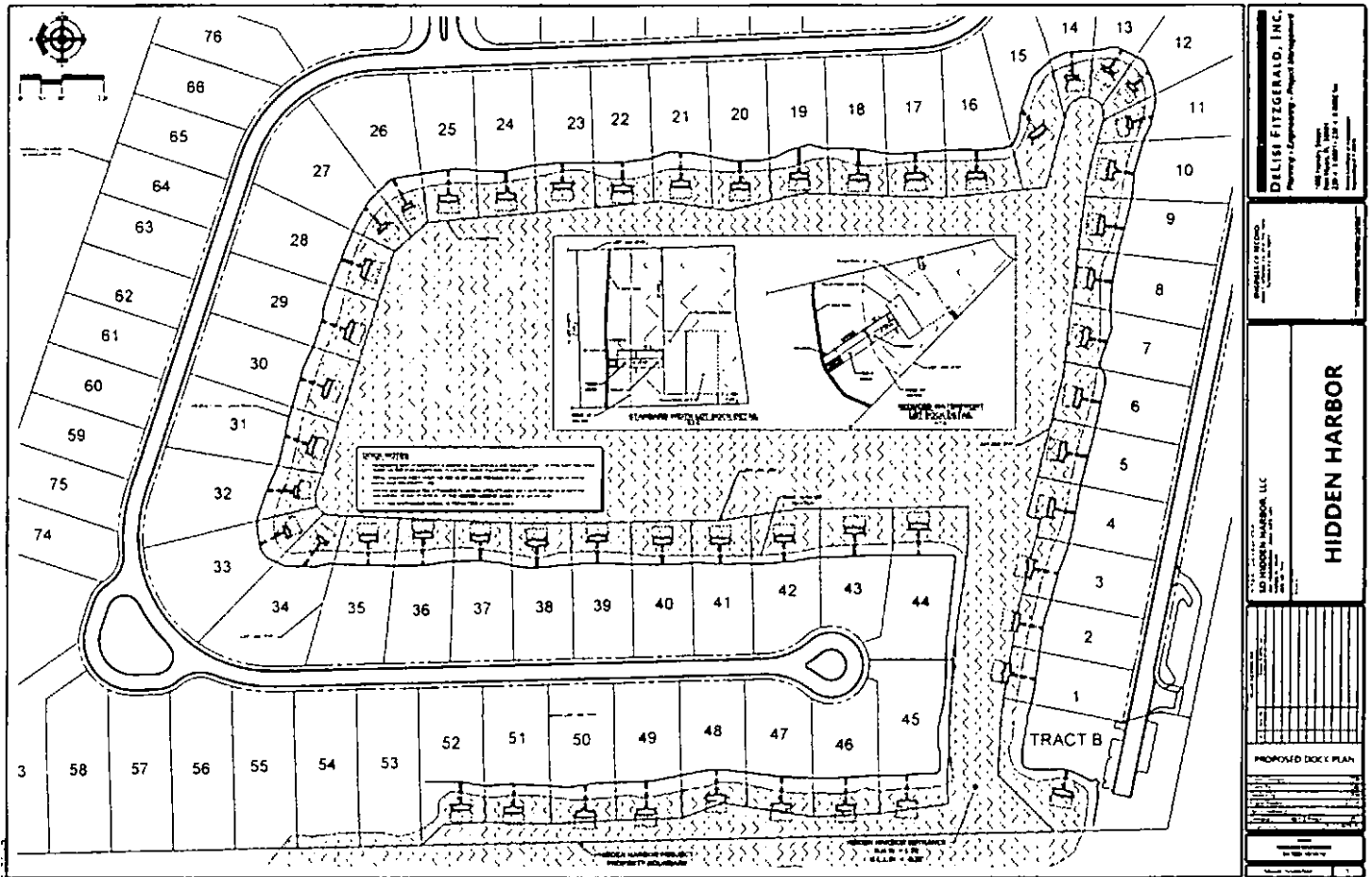


Exhibit Created On: 2018-06-27		LEE COUNTY, FL	
REGULATION DIVISION Project Name: HIDDEN HARBOR DOCKS		Application	
		Permit No: 36-03962-P	
 Application Number: 180626-10		Application Number: 180626-10	
		sfwmd.gov	
 0 9,000 18,000 Feet		South Florida Water Management District	



This instrument prepared without opinion of title by:

Charles A. B. Thomson, Esq.
Coleman, Yovanovich & Koester, P.A.
4001 Tamiami Trail N., Suite 300
Naples, Florida 34103
239-435-3535

After recording return original or certified copy to:

Laura Layman, Section Leader – Regulation
South Florida Water Management District
Lower West Coast Service Center
2301 McGregor Boulevard
Fort Myers, Florida 33901

FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS ("**Amendment**") is made this ____ day of _____, 2019, by SD Hidden Harbor, LLC, a Florida limited liability company ("**Declarant**"), and is joined-in by the South Florida Water Management District ("**Agency**").

WHEREAS, Declarant recorded that certain Declaration of Restrictive Covenants on September 12, 2016, under O.R. Instrument #2016000193927, Public Records of Lee County, Florida ("**Declaration**"); and

WHEREAS, as a condition precedent to approval of a pending modification of the Permit (as that term is defined in the Declaration), Declarant, with the written consent of the Agency pursuant to Article IV, Section B of the Declaration, desires to amend the Declaration as further set forth in this Amendment.

NOW, THEREFORE, Declarant hereby amends the Declaration as follows:

1. **Recitals; Definitions.** The above recitals are true and correct and incorporated herein by reference. Capitalized terms not defined herein shall have the meaning set forth in the Declaration.
2. **Plat References.** Except as expressly set forth in this Amendment, any and all references in the Declaration to the "Plat" or the "plat" shall mean and refer to the plat of Hidden Harbor Estates, recorded as Instrument Number 2015000133775, as affected by that certain replat of Hidden Harbor Estates II, recorded as Instrument Number 2016000191730, all of the Public Records of Lee County, Florida.
3. **Restatement of Paragraph 2.** To account for the replat of Hidden Harbor Estates II, paragraph 2 of the Declaration is hereby amended and restated in its entirety, as follows:

"2. No docks/slips are allowed on: (i) Lots 53 – 54 of the plat of Hidden Harbor Estates, recorded as Instrument Number 2015000133775; or on (ii) upon Lots 55 – 58 and Lot 73 of the replat of Hidden Harbor Estates II, recorded as Instrument Number 2016000191730, all of the Public Records of Lee County, Florida, even though said Lots abut or are adjacent to the Ten Mile Canal."
4. **Replacement of Exhibit "B".** The Harbor and Vessel Rules and Restrictions attached to the Declaration as Exhibit "B" are hereby deleted and replaced in their entirety by the updated Harbor and Vessel Rules and Restrictions attached hereto and incorporated herein by reference as Exhibit "B". Any and all references in the Declaration to Exhibit "B" shall mean and refer to the updated Harbor and Vessel Rules and Restrictions attached to this Amendment.

5. Miscellaneous. In all other respects, the Declaration remains unchanged. In the event of a conflict between the terms and provisions of this Amendment and the Declaration, the terms and provisions of this Amendment shall control and be given effect.

EXCEPT AS AMENDED HEREBY, all terms and provisions of the Declaration shall remain in full force and effect.

Signatures appear on the following page.

IN WITNESS WHEREOF, the Declarant has executed this Amendment the day and year first above written.

WITNESSES:

Print Name: _____

Print Name: _____

DECLARANT:

SD Hidden Harbor, LLC.
a Florida limited liability company

By: _____
Brian K. Stock, Manager

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Brian K. Stock, as Manager of SD Hidden Harbor, LLC, a Florida limited liability company. He is personally known to me.

[SEAL]

Notary Public
Printed Name: _____
My commission expires: _____

The Agency is joining in this Amendment for the sole and limited purpose of evidencing its consent to the Amendment as required under Article IV, Section B of the Declaration.

WITNESSES:

Print Name: _____

Print Name: _____

AGENCY:

South Florida Water Management District

By: _____

Print Name: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of South Florida Water Management District. He / She ☐ produced a driver's license as identification or ☐ is personally known to me.

[SEAL]

Notary Public

Printed Name: _____

My commission expires: _____

MORTGAGEE JOINDER

The undersigned, Regions Bank, an Alabama banking corporation ("**Mortgagee**"), hereby certifies that it is the holder of mortgages upon certain real property owned by SD Hidden Harbor, LLC, a Florida limited liability company ("**Mortgagor**"), located in Lee County, Florida, as said real property is more particularly described in the Mortgages (defined below).

The above-referenced mortgages are described as: (i) that certain Mortgage from Mortgagor to Mortgagee dated February 14, 2014 and recorded February 20, 2014 as Instrument Number 2014000035307, together with that certain Collateral Assignment of Leases, Rents and Contract Rights recorded February 20, 2014, as Official Records Instrument Number 2014000035308, together with that certain Financing Statement recorded February 20, 2014, as Official Records Instrument Number 2014000035309, together with related loan documents; and (ii) that certain Second Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing from Mortgagor to Mortgagee dated and recorded on March 25, 2015, as Official Records Instrument Number 2015000062338, together with that certain Second Mortgage Modification Agreement recorded on December 16, 2015 as Instrument Number 2015000268672, together with that certain Mortgage Modification and Future Advance Agreement recorded on December 19, 2018 as Official Records Instrument Number 2018000295730, and together with related loan documents, all of the Public Records of Lee County, Florida (collectively, the **"Mortgages"**).

By execution hereof, Mortgagee does hereby join in and consent to the foregoing Amendment and its exhibits, and agrees that its Mortgages shall be subordinate to that certain Declaration of Restrictive Covenants on September 12, 2016, under O.R. Instrument #2016000193927, Public Records of Lee County, Florida, as affected by said Amendment.

WITNESSES:

Print Name: _____

Print Name: _____

STATE OF _____ }
COUNTY OF _____ } ss.

MORTGAGEE:

REGIONS BANK,
an Alabama banking corporation

By: _____
Print Name: _____
Title: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, as _____ of Regions Bank, an Alabama banking corporation, on behalf of the bank, who is [] personally known to me, or [] has produced _____ as identification.

[SEAL]

Notary Public
Print Name: _____
Commission Expires: _____

EXHIBIT "B"

HARBOR AND VESSEL RULES AND RESTRICTIONS

SECTION I GENERAL RULES

1. Unless otherwise defined herein, capitalized terms shall have the same meanings set forth in that certain Declaration of Covenants, Restrictions and Easements for Hidden Harbor Estates, recorded as O.R. Instrument No. 2015000133788, Public Records of Lee County, Florida, as amended (the "**Declaration**").
2. Owners and their family, tenants, guests and invitees shall at all times abide by and be subject to these rules and regulations, as they may be amended from time to time by the Association in its sole discretion. Any reference to "Owners" herein shall also apply to their family, tenants, guests and invitees. Owners acknowledge and agree that these rules and regulations are supplemental to, and shall not replace or supersede any terms, conditions, or provisions applicable to the Harbor set forth in the Declaration.
3. Children fifteen (15) years of age or younger must be under the direct supervision and responsibility of their parents or legal guardians at all times while on docks or vessels located within the Harbor.
4. Owners shall be solely responsible for the proper mooring of their vessel in the Harbor and are required to maintain mooring lines in good condition and sufficiently strong to secure the vessel at all times. Any special mooring rules or procedures issued by the Association shall be complied with at all times.
5. Operation and use of the Harbor may be subject to reasonable rules and regulations promulgated by the Association. Areas of the Harbor may also be closed periodically for scheduled maintenance, construction, repairs, or any other reason deemed necessary or appropriate by the Association.
6. Owners shall be solely responsible for all costs and fees associated with the removal of unlicensed or illegally docked vessels in the Harbor.
7. Absolutely no fireworks are permitted anywhere on the Harbor unless part of a fireworks exhibit organized and conducted by the Association or its agents.
8. Refuse, trash and/or garbage shall not be thrown overboard. Garbage shall be deposited in cans supplied for that purpose, except engine oils, filters, spirits, combustible liquids, fish and bait, etc. The disposal of these items in the proper and approved manner is the responsibility of the Owner. Failure to properly dispose of these items will be reported to the appropriate state or federal authorities for prosecution under applicable environmental laws. In addition, the Owner will be responsible for all cleanup costs and is subject to permanent removal of his or her vessel from the Land. No person shall discharge sewage, waste water, fuel, oil, spirits, flammable liquids or oily bilge water into the waters and/or adjacent channels. Solvents and cleaning substances may be kept in dock boxes (if any) if stored in a safe manner and in accordance with all applicable fire codes and insurance requirements.

9. The Association may permit the police, the U.S. Coast Guard, Florida Fish and Wildlife, and similar watercraft to be docked in any portions of the Land designated for such use by the Association.
10. Diving and/or jumping from the docks or other areas of waterfront property into the Harbor is prohibited. Owners shall use caution when swimming in the Harbor and shall do so at their own risk. The Association may adopt rules and regulations to ensure the safety of the Owners.
11. Fishing shall only be permitted in the Harbor in those places specifically designated by the Association, if any, and only during such times as approved by the Association. No fish or other marine life of any kind shall be cleaned, prepared or processed in any manner in the Harbor or on any of the docks, except in those areas, if any, specifically designated for the same by the Association. Fish may be cleaned on a vessel, provided that it is done in accordance with the rules and regulations prescribed by the Association and provided that the vessel is properly cleaned afterward.
12. Violation of any of these rules and regulations by any Owner or such Owner's family, tenants, guests or invitees, which might injure a person, cause damage to property, be considered in bad taste by Association management, or cause harm to the good reputation of the Association, shall entitle the Association to exercise any remedy available under the Declaration or at law or in equity and shall be cause for other disciplinary action by the Association.
13. These rules and regulations shall neither apply to nor operate to interfere with any lawful development, construction, management, sales, re-sales, maintenance, or repair activities of the Developer or any of its successors or assigns, including the operations and activities of the Association. All of these rules and regulations shall apply to all Owners, even if not specifically stated in portions hereof. The Association shall be permitted, but not required, to grant relief to one or more Owners from specific rules and regulations upon written request thereof, where good cause is shown in the sole opinion of the Board.

SECTION II VESSEL AND BOAT DOCK RESTRICTIONS

1. The total number of boat docks, inclusive of all shoreline and upland storage, shall be limited to fifty-three (53), with only one motorized vessel, including jet-skis and personal watercraft, permitted to be moored at each dock at any given time. Boat docks (together with related, authorized Over-Water Improvements, defined below) shall be appurtenant to the Lots which they abut. Any number of non-motorized vessels, such as sailboats, paddle boats, canoes, kayaks and model sized remote-control boats are permitted to use the Harbor.
2. Not all Lots are eligible to construct a boat dock. A one-slip single facility dock (together with related, authorized Over-Water Improvements, defined below) may be constructed within the lot boundaries of the Amenity Lot and Lots 1 through 52 of Hidden Harbor Estates (as depicted on the Site Plan attached to the Declaration as Exhibit "E"), up to a maximum of fifty-three (53) boat docks (subject to the construction and dimensional limitations set forth herein, including, without limitation, in Article VII, below), unless otherwise approved and allowed by the Association, the District, and other applicable agencies. Each dock eligible Lot is authorized to construct one (1) "T" boat dock, together with certain authorized Over-Water Improvements (defined below) pursuant to the terms and conditions set forth herein, the Declaration, and the District Permit, all as may be amended from time to time. No Owner may construct or modify a dock or any bulkheads, moorings, pilings, boat shelters, or other over-water improvements of any kind

(collectively, "**Over-Water Improvements**") without first obtaining the prior written approval of the Association and applicable governmental authorities. No other Over-Water Improvements that would provide boating access are authorized along the remaining shoreline of Hidden Harbor Estates. Unless otherwise approved by the Association and applicable governmental agencies, the only future utilization of the remaining undeveloped shoreline of Hidden Harbor Estates will be as a purely natural area.

3. Over-Water Improvements are for the private use of Owners, their family and their guests.
4. No Owner may install a boatlift or davit (even if not over water) for the dry storage of vessels without first obtaining the prior written approval of the Association and applicable governmental authorities. All boat lifts and davits shall comply with uniform design specifications prescribed by the Association.
5. Docking facilities shall not be used for liveaboard purposes.
6. No commercial activity or business whatsoever shall be conducted or carried on any Over-Water Improvement. The foregoing shall not apply to the sales or leasing activities of the Developer or of any lawful dredging operation. Leasing docks in accordance with the Declaration shall not constitute commercial activity. Notwithstanding, docks may not be leased except in connection with the simultaneous leasing of an Owner's entire Lot pursuant to the terms and restrictions set forth in the Declaration.
7. The Association shall have the right to inspect any vessel in the Harbor to determine its compliance with all applicable municipal, county, state and federal fire, safety and other regulations. The Association shall have the right (but not be required) to remove any vessel from the Harbor which fails to comply with said requirements. The cost to remove any vessel pursuant to this Section shall be assessed against the appurtenant Lot as a Specific Assessment.
8. From time to time, the Association may require that all vessels be removed from the Harbor for maintenance, repairs and dredging at which time the boat docks and/or other Over-Water Improvements may be vacated for such period as may be necessary.

SECTION III VESSEL MAINTENANCE, REPAIR, OPERATION, AND DOCKING

1. All vessels docked on a long-term basis must be registered and adequately insured in the name of the Owner. Specifically, all vessels must: (a) be fully equipped and operable for operation (except during a period of temporary repairs not to exceed five (5) days); (b) comply with all licensing and registration requirements; and (c) be fully insured against bodily injury and property damage, with coverage of at least \$1,000,000.00 per occurrence. Notwithstanding any provision herein to the contrary, the Association shall not have any obligation to monitor or otherwise verify that any Owner has procured and/or is maintaining the insurance policies required by this Section. A copy of the vessel registration certificate and certificate of insurance shall be submitted upon the request of the Association. Corporate-owned vessels must submit corporate officer information, if requested by the Association.
2. Owners and invitees shall adhere to all speed regulations when operating within the Harbor. Vessels operating in the Harbor after sunset shall be properly equipped with navigational lights and shall be operated in accordance with all applicable provisions of federal and state maritime operating procedures. NO VESSELS SHALL BE OPERATED IN THE HARBOR SO AS TO

CREATE A WAKE, AND UNDER NO CIRCUMSTANCES SHALL A VESSEL BE OPERATED IN EXCESS OF THE ESTABLISHED SPEED LIMIT AND/OR SPEED NECESSARY FOR SAFE OPERATION, WHICHEVER IS SLOWER.

3. Each vessel must have sanitary equipment on board as is required by all applicable federal, state, and local authorities. In no event, whatsoever, may a boater discharge sewage or any foreign substance into the waters of the Harbor. The Association has the right (but not the obligation) to inspect all vessels for compliance.
4. There will be no hull scraping or cleaning of metal-based bottom paint on any vessel while it is docked or otherwise located on the Harbor. It is permissible to clean the non-painted running gear surfaces (props, shafts, and rudders). Vessel maintenance or repair activities that are reasonably anticipated to result in any discharges or release of oils or greases associated with engine and hydraulic repairs, and release of metal-based bottom paints associated with hull scraping, cleaning, and painting shall only occur after removal of the vessel being maintained or repaired from the water. Exceptions shall only be made in emergency conditions which have resulted in or can result in the sinking of a vessel. Minor repairs and maintenance that will not cause or contribute to the release of water pollutants and which are performed by Owners or qualified marine mechanics are allowed.
5. In-water hull maintenance, including cleaning of boat hulls, throughout the Harbor, shall be limited to use of sponges or plastic scouring pads (Starbrite, Hol-tite, or similar). The use of metal scrapers, stiff brushes, or similar implements to remove barnacles or extensive algae growth is prohibited.
6. Owners mooring vessels in the Harbor shall use only bottom paints that meet all current state and federal requirements.
7. To minimize the input of oil and grease into the water body through the discharge of bilge water, each vessel moored for more than two (2) consecutive days or seven (7) days in any thirty (30) day period, shall have installed, in the hull, absorbent pads that trap oil and grease but not water. The absorbent pads shall be replaced at intervals recommended by the manufacturer or more frequently if deemed necessary based on inspection by the Association. If manufacturer does not recommend a replacement frequency for this stated use, the absorbent pads shall be replaced not less frequently than every ninety (90) days or, at the election of the Association, in accordance with a replacement schedule established by the Association according to commercially-reasonable industry standards. The Owner shall discard all used pads in a manner that prevents any oil or grease from entering the water body.
8. During hurricane, tropical storm, and/or other high velocity wind threats, each Owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Developer, the Association or any other applicable agency. If a vessel sinks as a result of a storm, or for any other reason, the Owner of the respective vessel must remove the sunken vessel immediately after the occurrence of such event and, if not so removed within twenty-four (24) hours after the sinking, the Association may (but shall not be obligated to) remove the sunken vessel and impose a specific assessment against the Owner for the cost of such removal. Each Owner agrees to indemnify, defend and save the Association, its agents, employees and designees for and from any and all loss or damage incurred in connection with the exercise or nonexercise of the Association's rights hereunder. If an Owner plans to be absent during the hurricane season, such Owner must prepare his or her dock and secure or remove, as appropriate, his or her vessel prior

to his or her departure in accordance with the standards established by the Board (or in the absence thereof, with all due care), or designate a responsible firm or individual to care for his or her vessel should there be a hurricane or other storm, and furnish the Association with the name, address and telephone number of such firm or individual. Such firm or individual shall be subject to the approval of the Association. An Owner shall be liable for all damages caused to the Association property or other Owner's property due the Owner's improper preparation or failure to remove, as the case may be, of his or her vessel for hurricanes, tropical storms, and/or other high velocity wind threats.

9. The Owners shall be responsible for the perpetual maintenance of their respective Over-Water Improvements. Maintenance shall be conducted in perpetuity to ensure that all structures and signage are in proper working order and functioning as approved. The Association shall be responsible for all signage and educational materials.
10. In no event shall any Owner violate any applicable District Permit conditions or requirements. Any Owner who violates District Permit conditions or requirements shall be deemed in violation of and subject to enforcement hereunder, including, but not limited to, the removal of any vessel from the Harbor.

SECTION IV UTILITIES, FEES, AND CHARGES

1. The electrical boxes, meters, electricity and water serving each boat dock (or any other Over-Water Improvements) shall be an expense payable by the Owner entitled to the exclusive use of such dock (or any other Over-Water Improvements).

SECTION V LOSS OR DESTRUCTION OF PROPERTY OR INSTANCES OF PERSONAL INJURY

1. Each Owner, as a condition of Harbor use, and each family member, tenant and guest, as a condition of invitation to the Harbor, assumes sole responsibility for their property. The Association shall not be responsible for any loss or damage to any personal property used or stored at or upon the Harbor.
2. Each Owner using the Harbor adjacent to the Harbor assumes all risk of injury, loss or damage to himself or herself, his or her guests and invitees, and to his or her vessel or its appurtenances or contents, including any loss or damage arising out of or due to adverse weather conditions. Each Owner agrees to indemnify and to hold harmless the Developer and the Association against any such loss, damage, or claim arising out of the Owner's, or such Owner's family members', tenants', guests', or invitees' use of the Harbor or the operation of a vessel at or around the Harbor, whether or not the loss, damage or claim results from either the Developer's or the Association's negligence or from adverse weather conditions.
3. Any Owner, family member, tenant, guest, or other person who, in any manner, makes use of or accepts the use of any apparatus, appliance, facility, privilege, or service whatsoever owned, leased, or operated by the Association, or who engages in any contest, game, function, exercise, competition, or other activity operated, organized, arranged, or sponsored by the Association, in or around the Harbor, shall do so at his or her sole risk. The Owner, his or her family members, and guests shall hold the Developer, the Association, and the Developer's and Association's partners, directors, officers, employees, affiliates, representatives, and agents harmless from any and all loss, cost, claim, injury, damage, or liability sustained or incurred by the Owner, resulting

therefrom and from any act or omission, whether due to negligence or otherwise, of the Developer, the Association, or the Developer's or Association's partners, directors, officers, employees, affiliates, representatives, or agents.

SECTION VI GUEST PRIVILEGES

1. The Association reserves the right to limit the number of guests that accompany an Owner on any given day and without prior notice. Guest privileges may be denied, withdrawn, or revoked at any time, without prior notice, for reasons considered sufficient by the Board or Association management in its sole and absolute discretion. An Owner is prohibited from charging a guest or receiving any consideration or benefit from the guest for the guest's use of the Owner's Over-Water Improvements, except in the event that said Over-Water Improvements are leased in conjunction with the leasing of the Owner's Lot pursuant to the terms set forth in the Declaration. During the leasing of the Owner's Lot, an Owner's right to use the appurtenant Over-Water Improvements is assigned to the tenant for the duration of the lease term. Any violation of this rule is subject to disciplinary action by the Association.
2. The Association reserves the right to limit the number of times or days that a guest may use an Owner's Over-Water Improvements each year. A particular individual using an Owner's Over-Water Improvements as a day guest must be registered by the sponsoring Owner. The Association reserves the right to require identification by each day guest.

SECTION VII DOCK CONSTRUCTION

1. The total, over-water area covered by any and all Over-Water Improvements for a given Lot (the "**Preempted Area**") is not to exceed eight hundred twenty (820) total square feet over-water while maintaining a minimum setback of five (5) feet from the Lot's side boundaries (i.e., no Over-Water Improvements shall be placed or constructed within five (5) feet from a Lot's side boundaries). Notwithstanding the foregoing or anything contained herein to the contrary, no Owner may construct, place, or modify any Over-Water Improvements without first obtaining the prior written approval of the Association and applicable governmental authorities. For the avoidance of doubt, approval by the Association shall not be deemed a representation or warranty by the Association or the Developer that said Over-Water Improvements are in compliance with applicable rules, regulations, ordinances, and/or laws, and ensuring said compliance shall be the sole responsibility of the applicable Owner. A single floating boat lift is permitted with each dock, and is considered an Over-Water Improvement subject to the Preempted Area restrictions, above.
2. No Over-Water Improvements shall be constructed along or within the Ten Mile Canal.
3. Dock and walkway pilings shall be constructed of plastic, concrete or greenheart, non-CCA treated wood or wood wrapped in 30 to 60 mil pvc.
4. Owners should be aware that manatees are found in the Harbor. All personnel associated with the construction of Over-Water Improvements shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injuries to manatees. Any permittee performing work in the Harbor shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under

the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.

5. The Standard Manatee Conditions for In-Water Work shall be followed for all in-water activity.
6. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Any approved Florida Fish and Wildlife Conservation Commission ("FWC") awareness signs must be used. One sign measuring at least 3 feet by 4 feet which reads "*Caution: Manatee Area*" must be posted. A second sign measuring at least 8 inches by 11 inches explaining the requirements for "IDLE SPEED/NO WAKE" and the shut-down of in-water operations must be posted in a location prominently visible to all Owners and/or personnel who desire to engage in water-related activities.
7. To reduce the possibility of injuring or killing a manatee during construction, in-water work shall not be performed during the following time of the year: November 15 to March 31.
8. A manatee observer shall be in place when in-water work is being performed. That person shall have experience in manatee observation and be equipped with polarized sunglasses to aid in observation. The manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within fifty feet (50') of any in-water construction activity. Observers shall maintain a log detailing manatee sightings, work stoppages, and other protected species related incidents. These logs and reports shall be submitted to the FWC's Imperiled Species Management Section (ImperiledSpecies@myfwc.com) within thirty (30) days following each in-water dock completion. Movement of a work barge, other associated vessels, or any in-water work shall not be performed after sunset, when the possibility of spotting manatees is negligible.
9. Prior to applying for a building permit for any Over-Water Improvements, a permittee is required to obtain a letter from the Lee County Natural Resources Marine Program stating that the law enforcement mitigation fee has been paid.
10. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment.
11. The Association and the Owners shall provide temporary right of access to Common Areas and Lots for federal and state agencies, including, but not limited to the FWC, the District and the U.S. Fish and Wildlife Service, for the purpose of conducting law enforcement activities and collection of scientific research.

SECTION VIII MANATEES

1. OWNERS SHOULD BE AWARE THAT MANATEES ARE FOUND IN THE HARBOR.
2. All resident boaters are required, when entering, traversing or existing the Harbor, to operate at "IDLE SPEED/NO WAKE" due to the potential of manatee presence. All vessels shall also follow routes of deep water whenever possible. Owners are encouraged to use extra caution at the injunction at the Harbor entrance to Ten Mile Canal. Boaters who do not follow posted speed signs shall be reported to the appropriate local authorities.

3. All in-water operations, including vessels, must be shut-down if a manatee(s) comes within fifty feet (50') of operation. Activities shall not resume until the manatee(s) has moved beyond the 50-foot radius of the operation, or until thirty (30) minutes elapses if the manatee(s) has not reappeared within fifty feet (50') of the operation. Animals must not be herded away or harassed into leaving.
4. Any collision with or injury to a manatee shall be reported immediately to the FWC Hotline at 888-404- FWCC. Collision and/or injury should also be reported to the Fish and Wildlife Service in Vero Beach (772) 562-3909.
5. No later than thirty (30) days prior to the beginning of construction for the first boat dock, the Association shall implement the Manatee Educational Program, which includes the following:
 - a. An FWC-approved Manatee Observation Program (See Paragraph 6, below);
 - b. An FWC-approved Hidden Harbor Estates Preserve Manatee Education and Boater Awareness Program to be provided to every waterfront lot owner with a copy of the Association's governing documents;
 - c. Installation of permanent manatee educational signs, speed zone booklets, and manatee educational brochures. In addition, the Association shall replace the signs in the event the signs fade, become damaged or outdated, and maintain these signs for the life of the facility. The guidelines for installation can be found at: <http://www.myfwc.com/wildlifehabitats/managed/manatee/signs/>, or can be obtained by contacting the FWC, Imperiled Species Management Section at 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600 or (850) 922-4330;
 - d. Distribution of laminated booklets of the County speed zones to each Owner and other users of the docks, at no charge. The booklets are available free of charge from the Florida Inland Navigation District (561) 627-3386;
 - e. Installation of a sign visible to boaters in the Harbor, warning of the possible presence of manatees and requiring boaters to place the vessel motors in neutral, or turn the engine off, and proceed without power if a manatee is observed within fifty (50) feet of the vessel;
 - f. Installation of a regulatory sign (IDLE SPEED, NO WAKE, with specific reference to regulatory authority) at the entrance to the Harbor; and
 - g. Educational materials must be made available at all times, and must be replaced if they become damaged or outdated, and must be maintained for the life of the Association. The on-site location and types of educational materials used must be acceptable to the FWC, which can be contacted at ImperiledSpecies@myfwc.com.
6. The Association shall implement a Manatee Observation Program designed to increase boater awareness of manatees and notify boaters of the presence of manatees within the Harbor. This program shall be implemented upon completion of the first dock and provided on a yearly basis thereafter to all Owners. The program shall be limited to the Harbor and shall include the following stipulations:

- a. The Association shall provide yearly manatee education and boating awareness courses for all Owners.
 - b. The Association shall assign a Manatee Observation Captain to receive the proper training and/or certification to observe and verify the presence of manatees.
 - c. The Manatee Observation Captain shall conduct training courses on a yearly basis to all Owners on the proper techniques for observation and verification of the presence of manatees, as well as avoidance of impacts to manatees.
 - d. By March 1st of each year, the Association shall submit contact information of the Manatee Observation Captain to the District and the FWC or when such persons are changed.
 - e. The Manatee Observation Captain shall implement a program that provides observers during daylight hours from November 15 to March 31, to notify boaters immediately of the presence of manatees and to proceed with caution within the Harbor.
 - f. Owners will provide the Association with self-certification documents upon completion of the yearly education course. The Association shall maintain the documents on-site for review by District staff during regular business hours if required.
7. Violators of these restrictions will be given an initial warning from the Manatee Observation Captain, unless the violation results in the harassment or harm of a manatee. A repeat violation will result in the violator being reported to the appropriate regulatory agency for legal action. A violation that results in the harassment or harm of a manatee will result in immediate reporting to appropriate regulatory agency for legal action.
 8. Developer has agreed to cooperate with the Florida Fish and Wildlife Commission in applying for and obtaining designation of the Harbor as a "Manatee Refuge" as defined under the Florida Manatee Sanctuary Act.
 9. The manatee speed zone for the Harbor is slow speed, year-round [68C-22.005(2)(d)8, Florida Administrative Code].

SECTION IX ENFORCEMENT, AMENDMENTS AND GENERAL PROVISIONS

1. The Association shall enforce the restrictions set forth herein, as well as other restrictions set forth in the Declaration and in the District Permit, as may be amended from time to time. Further, all enforcement remedies pursuant to Chapter 373, Florida Statutes are available to the District, including the ability to revoke the District Permit and to assess fines and penalties against the Association and the Owners should either party be found to be in non-compliance with the District Permit.
2. The Department of Army, U.S. Army Corps of Engineers ("DOA") shall be a party to any modification, alteration, release or revocation of these deed restrictions pertaining to boat docks, Over-Water Improvements, and enforcement of the restrictions pertaining to same, and shall review and approve as necessary any additional structures or activities that require approval.

Developer reserves the right, without joinder of any Owner, or the Association to amend and modify the foregoing restrictions as may be permitted or allowed by applicable governmental agencies, including, but not limited to the District and DOA.

**THIRD AMENDMENT TO
DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR HIDDEN HARBOR ESTATES**

THIS AMENDMENT INCLUDES A REPLACEMENT AND/OR SUBSTANTIAL REWORDING OF EXHIBIT "D", EXHIBIT "E", AND EXHIBIT "F" OF THE DECLARATION (DEFINED BELOW). SEE GOVERNING DOCUMENTS FOR THE CURRENT TEXT OF SAID EXHIBITS.

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR HIDDEN HARBOR ESTATES ("Amendment") is made this ____ day of _____, 2019, by SD Hidden Harbor, LLC, a Florida limited liability company ("Developer").

WHEREAS, Developer recorded that certain Declaration of Covenants, Restrictions and Easements for Hidden Harbor Estates on June 19, 2015 under O.R. Instrument #2015000133788, as amended by that certain First Amendment to Declaration of Covenants, Restrictions and Easements for Hidden Harbor Estates recorded on August 17, 2016 under O.R. Instrument #2016000183464, and as further amended by that certain Second Amendment to Declaration of Covenants, Restrictions and Easements for Hidden Harbor Estates recorded on November 3, 2016, under O.R. Instrument #2016000234372 ("Second Amendment"), all of the Public Records of Lee County, Florida ("Declaration"); and

WHEREAS, pursuant to Section 13.1 of the Declaration, prior to the Turnover Event (as defined in the Declaration), Developer may modify and or amend the Declaration in the exercise of its sole and absolute discretion; and

WHEREAS, the Turnover Event has not yet occurred.

NOW, THEREFORE, in accordance with Section 13.1 of the Declaration, Developer hereby amends the Declaration as follows:

1. Recitals; Definitions. The above recitals are true and correct and incorporated herein by reference. Capitalized terms not defined herein shall have the meaning set forth in the Declaration.
2. Amendment to 2nd Recital. The second (2nd) recital of the Declaration is amended as follows, with new language shown below as underlined, and proposed deleted language shown below as stricken:

"WHEREAS, Developer intends to develop, or has developed or has caused to be developed, on said Land a planned residential neighborhood community known as "Hidden Harbor Estates" consisting of single-family lots, amenities, and certain roadways, including, but not limited to that certain access road connecting to U.S. 41, as shown on that plat of Hidden Harbor Estates, recorded as Instrument Number 2015000133775, as affected by that certain replat of Hidden Harbor Estates II, recorded as Instrument Number 2016000191730, in all of the Public Records of Lee County, Florida (collectively, the "Plat"); and

3. Amendment to Section 2.2.2(X). Paragraph 2.2.2(X) of the Declaration is amended as follows, with new language shown below as underlined, and proposed deleted language shown below as stricken:

“(X) Boat Docks. No docks, bulkheads, moorings, pilings, ~~or boat shelters~~, or other over-water improvements of any kind (collectively, “Over-Water Improvements”) shall be placed, constructed, or otherwise erected on or over any part of the Harbor, except such as shall be placed, constructed, or otherwise erected with both Association and applicable governmental approval (including, without limitation, applicable permits and/or approvals from Lee County, the District, and the United States Army Corps of Engineers); provided, however, at the sole election of Association, Association may (whether directly or by and through the ARB), without obligation, coordinate and/or remit to the District and any other governmental agency any proposed plans, proposals, and/or as-built plans and specifications relating to any Over-Water Improvements constructed and/or modified by an Owner. ~~Docks—Unless otherwise approved by Association and applicable governmental authorities, all Over-Water Improvements must be constructed with~~ within each Lot’s boundaries, and said Over-Water Improvements shall be subject to any additional limitations pursuant to the Vessel and Harbor Rules and Restrictions (described below) and any applicable governmental rules, regulations, ordinances, permits, approvals, and/or laws. Only the Owners of Lots 1 through 52 of Hidden Harbor Estates, as depicted on the Site Plan attached hereto as Exhibit “E”, shall be eligible to construct a single-facility boat dock on their Lot (“Dock Eligible Lots”). In addition, the Developer or Association may construct a dock, clubhouse area or other recreational facilities on ~~Tract E and/or~~ Tract B (the “Amenity Lot”). The Association shall maintain, repair, replace and insure (to the extent insurable), at its expense, all improvements on the Amenity Lot. The Developer shall be responsible for applying for and obtaining the necessary permits and paying the applicable governmental fees to initially construct a boat dock on the Dock Eligible Lots; provided, however, each Owner (subject to prior Association and applicable governmental approval) shall be individually responsible for applying for and obtaining the necessary permits and paying the applicable governmental fees prior to performing any alterations, modifications, replacements, and/or additions to existing Over-Water Improvements on the Dock Eligible Lots. The Owner of each Dock Eligible Lot shall also be responsible for maintaining, repairing, replacing and insuring the ~~dock and any related facilities~~ Over-Water Improvements appurtenant to their Lot. The Vessel and Harbor Rules and Restrictions set forth on Exhibit “F” attached hereto and incorporated herein are established with respect to, inter alia, the construction, modification, and/or replacement of ~~boat docks and slips~~ Over-Water Improvements, including, without limitation, a requirement that any such Over-Water Improvements do not exceed in the aggregate eight hundred twenty (820) total square feet over-water while maintaining a minimum setback of five (5) feet from the Lot’s side boundaries (i.e., no Over-Water Improvements shall be placed or constructed within five (5) feet from a Lot’s side boundaries). Notwithstanding anything contained in this Declaration to the contrary, in no event shall Association and/or ARB approval of any Owner-constructed and/or Owner-modified Over-Water Improvements be deemed to: (i) be a representation or warranty by Association or Developer that said Over-Water Improvements are in compliance with applicable rules, regulations, ordinances, and/or laws; or (ii) limit the rights and/or remedies of any applicable governmental agency in connection with enforcing rules, regulations, ordinances, and/or laws applicable to said Over-Water Improvements, and in no event shall Association or Developer have any liability or obligation to any Owner in connection with any such Association and/or ARB approval.”

4. Amendment to Section 10.3.3. Paragraph 10.3.3 of the Declaration is amended as follows, with new language shown below as underlined, and proposed deleted language shown below as stricken:

“10.3.3 An easement in favor of the Owner of each Dwelling Unit for encroachment of any portion of the Dwelling Unit upon the Common Areas as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Without limiting the generality of the foregoing, the aforementioned easement of encroachment shall include any Over-Water Improvements which extend into the Harbor (i.e., Tract L of the Plat) and which are otherwise approved in all other respects as required under this Declaration (i.e., including Association and applicable governmental approvals).”

5. Replacement of Exhibit “D”. The District Permit attached to the Declaration as Exhibit “D” is hereby deleted and replaced in its entirety with the further amended District Permit attached hereto and incorporated herein by reference as Exhibit “D”.

6. Replacement of Exhibit “E”. Pursuant to the recording of that certain replat of Hidden Harbor Estates II, recorded as O.R. Instrument No. 2016000191730, Public Records of Lee County, Florida, the Site Plan attached to the Declaration as Exhibit “E” is hereby deleted and replaced in its entirety by the updated Site Plan attached hereto and incorporated herein by reference as Exhibit “E”.

7. Replacement of Exhibit “F”. The Vessel and Harbor Rules and Restrictions attached to the Declaration as Exhibit “F” (as amended pursuant to the Second Amendment) are hereby deleted and replaced in their entirety by the updated Vessel and Harbor Rules and Restrictions attached hereto and incorporated herein by reference as Exhibit “F”.

8. Miscellaneous. In all other respects, the Declaration remains unchanged. In the event of a conflict between the terms and provisions of this Amendment and the Declaration, the terms and provisions of this Amendment shall control and be given effect.

EXCEPT AS AMENDED HEREBY, all terms and provisions of the Declaration shall remain in full force and effect.

Signatures appear on the following page.

IN WITNESS WHEREOF, the Developer has executed this Amendment the day and year first above written.

WITNESSES:

Print Name: _____

Print Name: _____

DEVELOPER:

SD Hidden Harbor, LLC,
a Florida limited liability company

By: _____
Brian K. Stock, Manager

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Brian K. Stock, as Manager of SD Hidden Harbor, LLC, a Florida limited liability company. He is personally known to me.

[SEAL]

Notary Public
Printed Name: _____
My commission expires: _____

SCHEDULE OF EXHIBITS

Exhibit "D": District Permit
Exhibit "E": Site Plan
Exhibit "F": Vessel and Harbor Rules and Restrictions

EXHIBIT “D”

District Permit

See attached page(s).

EXHIBIT "E"

Site Plan

See attached page(s).

EXHIBIT “F”

Vessel and Harbor Rules and Restrictions

See attached page(s).

EXHIBIT "F"

HARBOR AND VESSEL RULES AND RESTRICTIONS

SECTION I GENERAL RULES

1. Unless otherwise defined herein, capitalized terms shall have the same meanings set forth in that certain Declaration of Covenants, Restrictions and Easements for Hidden Harbor Estates, recorded as O.R. Instrument No. 2015000133788, Public Records of Lee County, Florida, as amended.
2. Owners and their family, tenants, guests and invitees shall at all times abide by and be subject to these rules and regulations, as they may be amended from time to time by the Association in its sole discretion. Any reference to "Owners" herein shall also apply to their family, tenants, guests and invitees. Owners acknowledge and agree that these rules and regulations are supplemental to, and shall not replace or supersede any terms, conditions, or provisions applicable to the Harbor set forth in the Declaration.
3. Children fifteen (15) years of age or younger must be under the direct supervision and responsibility of their parents or legal guardians at all times while on docks or vessels located within the Harbor.
4. Owners shall be solely responsible for the proper mooring of their vessel in the Harbor and are required to maintain mooring lines in good condition and sufficiently strong to secure the vessel at all times. Any special mooring rules or procedures issued by the Association shall be complied with at all times.
5. Operation and use of the Harbor may be subject to reasonable rules and regulations promulgated by the Association. Areas of the Harbor may also be closed periodically for scheduled maintenance, construction, repairs, or any other reason deemed necessary or appropriate by the Association.
6. Owners shall be solely responsible for all costs and fees associated with the removal of unlicensed or illegally docked vessels in the Harbor.
7. Absolutely no fireworks are permitted anywhere on the Harbor unless part of a fireworks exhibit organized and conducted by the Association or its agents.
8. Refuse, trash and/or garbage shall not be thrown overboard. Garbage shall be deposited in cans supplied for that purpose, except engine oils, filters, spirits, combustible liquids, fish and bait, etc. The disposal of these items in the proper and approved manner is the responsibility of the Owner. Failure to properly dispose of these items will be reported to the appropriate state or federal authorities for prosecution under applicable environmental laws. In addition, the Owner will be responsible for all cleanup costs and is subject to permanent removal of his or her vessel from the Land. No person shall discharge sewage, waste water, fuel, oil, spirits, flammable liquids or oily bilge water into the waters and/or adjacent channels. Solvents and cleaning substances may be kept in dock boxes (if any) if stored in a safe manner and in accordance with all applicable fire codes and insurance requirements.
9. The Association may permit the police, the U.S. Coast Guard, Florida Fish and Wildlife, and similar watercraft to be docked in any portions of the Land designated for such use by the Association.
10. Diving and/or jumping from the docks or other areas of waterfront property into the Harbor is prohibited. Owners shall use caution when swimming in the Harbor and shall do so at their own risk. The Association may adopt rules and regulations to ensure the safety of the Owners.

11. Fishing shall only be permitted in the Harbor in those places specifically designated by the Association, if any, and only during such times as approved by the Association. No fish or other marine life of any kind shall be cleaned, prepared or processed in any manner in the Harbor or on any of the docks, except in those areas, if any, specifically designated for the same by the Association. Fish may be cleaned on a vessel, provided that it is done in accordance with the rules and regulations prescribed by the Association and provided that the vessel is properly cleaned afterward.
12. Violation of any of these rules and regulations by any Owner or such Owner's family, tenants, guests or invitees, which might injure a person, cause damage to property, be considered in bad taste by Association management, or cause harm to the good reputation of the Association, shall entitle the Association to exercise any remedy available under the Declaration or at law or in equity and shall be cause for other disciplinary action by the Association.
13. These rules and regulations shall neither apply to nor operate to interfere with any lawful development, construction, management, sales, re-sales, maintenance, or repair activities of the Developer or any of its successors or assigns, including the operations and activities of the Association. All of these rules and regulations shall apply to all Owners, even if not specifically stated in portions hereof. The Association shall be permitted, but not required, to grant relief to one or more Owners from specific rules and regulations upon written request thereof, where good cause is shown in the sole opinion of the Board.

SECTION II VESSEL AND BOAT DOCK RESTRICTIONS

1. The total number of boat docks, inclusive of all shoreline and upland storage, shall be limited to fifty-three (53), with only one motorized vessel, including jet-skis and personal watercraft, permitted to be moored at each dock at any given time. Boat docks (together with related, authorized Over-Water Improvements, defined below) shall be appurtenant to the Lots which they abut. Any number of non-motorized vessels, such as sailboats, paddle boats, canoes, kayaks and model sized remote-control boats are permitted to use the Harbor.
2. Not all Lots are eligible to construct a boat dock. A one-slip single facility dock (together with related, authorized Over-Water Improvements, defined below) may be constructed within the lot boundaries of the Amenity Lot and Lots 1 through 52 of Hidden Harbor Estates (as depicted on the Site Plan attached to the Declaration as Exhibit "E"), up to a maximum of fifty-three (53) boat docks (subject to the construction and dimensional limitations set forth herein, including, without limitation, in Article VII, below), unless otherwise approved and allowed by the Association, the District, and other applicable agencies. Each dock eligible Lot is authorized to construct one (1) "T" boat dock, together with certain authorized Over-Water Improvements (defined below) pursuant to the terms and conditions set forth herein, the Declaration, and the District Permit, all as may be amended from time to time. No Owner may construct or modify a dock or any bulkheads, moorings, pilings, boat shelters, or other over-water improvements of any kind (collectively, "**Over-Water Improvements**") without first obtaining the prior written approval of the Association and applicable governmental authorities. No other Over-Water Improvements that would provide boating access are authorized along the remaining shoreline of Hidden Harbor Estates. Unless otherwise approved by the Association and applicable governmental agencies, the only future utilization of the remaining undeveloped shoreline of Hidden Harbor Estates will be as a purely natural area.
3. Over-Water Improvements are for the private use of Owners, their family and their guests.
4. No Owner may install a boatlift or davit (even if not over water) for the dry storage of vessels without first obtaining the prior written approval of the Association and applicable governmental authorities. All boat lifts and davits shall comply with uniform design specifications prescribed by the Association.

5. Docking facilities shall not be used for liveaboard purposes.
6. No commercial activity or business whatsoever shall be conducted or carried on any Over-Water Improvement. The foregoing shall not apply to the sales or leasing activities of the Developer or of any lawful dredging operation. Leasing docks in accordance with the Declaration shall not constitute commercial activity. Notwithstanding, docks may not be leased except in connection with the simultaneous leasing of an Owner's entire Lot pursuant to the terms and restrictions set forth in the Declaration.
7. The Association shall have the right to inspect any vessel in the Harbor to determine its compliance with all applicable municipal, county, state and federal fire, safety and other regulations. The Association shall have the right (but not be required) to remove any vessel from the Harbor which fails to comply with said requirements. The cost to remove any vessel pursuant to this Section shall be assessed against the appurtenant Lot as a Specific Assessment.
8. From time to time, the Association may require that all vessels be removed from the Harbor for maintenance, repairs and dredging at which time the boat docks and/or other Over-Water Improvements may be vacated for such period as may be necessary.

SECTION III VESSEL MAINTENANCE, REPAIR, OPERATION, AND DOCKING

1. All vessels docked on a long-term basis must be registered and adequately insured in the name of the Owner. Specifically, all vessels must: (a) be fully equipped and operable for operation (except during a period of temporary repairs not to exceed five (5) days); (b) comply with all licensing and registration requirements; and (c) be fully insured against bodily injury and property damage, with coverage of at least \$1,000,000.00 per occurrence. Notwithstanding any provision herein to the contrary, the Association shall not have any obligation to monitor or otherwise verify that any Owner has procured and/or is maintaining the insurance policies required by this Section. A copy of the vessel registration certificate and certificate of insurance shall be submitted upon the request of the Association. Corporate-owned vessels must submit corporate officer information, if requested by the Association.
2. Owners and invitees shall adhere to all speed regulations when operating within the Harbor. Vessels operating in the Harbor after sunset shall be properly equipped with navigational lights and shall be operated in accordance with all applicable provisions of federal and state maritime operating procedures. **NO VESSELS SHALL BE OPERATED IN THE HARBOR SO AS TO CREATE A WAKE, AND UNDER NO CIRCUMSTANCES SHALL A VESSEL BE OPERATED IN EXCESS OF THE ESTABLISHED SPEED LIMIT AND/OR SPEED NECESSARY FOR SAFE OPERATION, WHICHEVER IS SLOWER.**
3. Each vessel must have sanitary equipment on board as is required by all applicable federal, state, and local authorities. In no event, whatsoever, may a boater discharge sewage or any foreign substance into the waters of the Harbor. The Association has the right (but not the obligation) to inspect all vessels for compliance.
4. There will be no hull scraping or cleaning of metal-based bottom paint on any vessel while it is docked or otherwise located on the Harbor. It is permissible to clean the non-painted running gear surfaces (props, shafts, and rudders). Vessel maintenance or repair activities that are reasonably anticipated to result in any discharges or release of oils or greases associated with engine and hydraulic repairs, and release of metal-based bottom paints associated with hull scraping, cleaning, and painting shall only occur after removal of the vessel being maintained or repaired from the water. Exceptions shall only be made in emergency conditions which have resulted in or can result in the sinking of a vessel. Minor repairs and maintenance that will not cause or contribute to the

release of water pollutants and which are performed by Owners or qualified marine mechanics are allowed.

5. In-water hull maintenance, including cleaning of boat hulls, throughout the Harbor, shall be limited to use of sponges or plastic scouring pads (Starbrite, Hol-tite, or similar). The use of metal scrapers, stiff brushes, or similar implements to remove barnacles or extensive algae growth is prohibited.
6. Owners mooring vessels in the Harbor shall use only bottom paints that meet all current state and federal requirements.
7. To minimize the input of oil and grease into the water body through the discharge of bilge water, each vessel moored for more than two (2) consecutive days or seven (7) days in any thirty (30) day period, shall have installed, in the hull, absorbent pads that trap oil and grease but not water. The absorbent pads shall be replaced at intervals recommended by the manufacturer or more frequently if deemed necessary based on inspection by the Association. If manufacturer does not recommend a replacement frequency for this stated use, the absorbent pads shall be replaced not less frequently than every ninety (90) days or, at the election of the Association, in accordance with a replacement schedule established by the Association according to commercially-reasonable industry standards. The Owner shall discard all used pads in a manner that prevents any oil or grease from entering the water body.
8. During hurricane, tropical storm, and/or other high velocity wind threats, each Owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Developer, the Association or any other applicable agency. If a vessel sinks as a result of a storm, or for any other reason, the Owner of the respective vessel must remove the sunken vessel immediately after the occurrence of such event and, if not so removed within twenty-four (24) hours after the sinking, the Association may (but shall not be obligated to) remove the sunken vessel and impose a specific assessment against the Owner for the cost of such removal. Each Owner agrees to indemnify, defend and save the Association, its agents, employees and designees for and from any and all loss or damage incurred in connection with the exercise or nonexercise of the Association's rights hereunder. If an Owner plans to be absent during the hurricane season, such Owner must prepare his or her dock and secure or remove, as appropriate, his or her vessel prior to his or her departure in accordance with the standards established by the Board (or in the absence thereof, with all due care), or designate a responsible firm or individual to care for his or her vessel should there be a hurricane or other storm, and furnish the Association with the name, address and telephone number of such firm or individual. Such firm or individual shall be subject to the approval of the Association. An Owner shall be liable for all damages caused to the Association property or other Owner's property due the Owner's improper preparation or failure to remove, as the case may be, of his or her vessel for hurricanes, tropical storms, and/or other high velocity wind threats.
9. The Owners shall be responsible for the perpetual maintenance of their respective Over-Water Improvements. Maintenance shall be conducted in perpetuity to ensure that all structures and signage are in proper working order and functioning as approved. The Association shall be responsible for all signage and educational materials.
10. In no event shall any Owner violate any applicable District Permit conditions or requirements. Any Owner who violates District Permit conditions or requirements shall be deemed in violation of and subject to enforcement hereunder, including, but not limited to, the removal of any vessel from the Harbor.

SECTION IV UTILITIES, FEES, AND CHARGES

1. The electrical boxes, meters, electricity and water serving each boat dock (or any other Over-Water Improvements) shall be an expense payable by the Owner entitled to the exclusive use of such dock (or any other Over-Water Improvements).

SECTION V LOSS OR DESTRUCTION OF PROPERTY OR INSTANCES OF PERSONAL INJURY

1. Each Owner, as a condition of Harbor use, and each family member, tenant and guest, as a condition of invitation to the Harbor, assumes sole responsibility for their property. The Association shall not be responsible for any loss or damage to any personal property used or stored at or upon the Harbor.
2. Each Owner using the Harbor adjacent to the Harbor assumes all risk of injury, loss or damage to himself or herself, his or her guests and invitees, and to his or her vessel or its appurtenances or contents, including any loss or damage arising out of or due to adverse weather conditions. Each Owner agrees to indemnify and to hold harmless the Developer and the Association against any such loss, damage, or claim arising out of the Owner's, or such Owner's family members', tenants', guests', or invitees' use of the Harbor or the operation of a vessel at or around the Harbor, whether or not the loss, damage or claim results from either the Developer's or the Association's negligence or from adverse weather conditions.
3. Any Owner, family member, tenant, guest, or other person who, in any manner, makes use of or accepts the use of any apparatus, appliance, facility, privilege, or service whatsoever owned, leased, or operated by the Association, or who engages in any contest, game, function, exercise, competition, or other activity operated, organized, arranged, or sponsored by the Association, in or around the Harbor, shall do so at his or her sole risk. The Owner, his or her family members, and guests shall hold the Developer, the Association, and the Developer's and Association's partners, directors, officers, employees, affiliates, representatives, and agents harmless from any and all loss, cost, claim, injury, damage, or liability sustained or incurred by the Owner, resulting therefrom and from any act or omission, whether due to negligence or otherwise, of the Developer, the Association, or the Developer's or Association's partners, directors, officers, employees, affiliates, representatives, or agents.

SECTION VI GUEST PRIVILEGES

1. The Association reserves the right to limit the number of guests that accompany an Owner on any given day and without prior notice. Guest privileges may be denied, withdrawn, or revoked at any time, without prior notice, for reasons considered sufficient by the Board or Association management in its sole and absolute discretion. An Owner is prohibited from charging a guest or receiving any consideration or benefit from the guest for the guest's use of the Owner's Over-Water Improvements, except in the event that said Over-Water Improvements are leased in conjunction with the leasing of the Owner's Lot pursuant to the terms set forth in the Declaration. During the leasing of the Owner's Lot, an Owner's right to use the appurtenant Over-Water Improvements is assigned to the tenant for the duration of the lease term. Any violation of this rule is subject to disciplinary action by the Association.
2. The Association reserves the right to limit the number of times or days that a guest may use an Owner's Over-Water Improvements each year. A particular individual using an Owner's Over-Water Improvements as a day guest must be registered by the sponsoring Owner. The Association reserves the right to require identification by each day guest.

SECTION VII DOCK CONSTRUCTION

1. The total, over-water area covered by any and all Over-Water Improvements for a given Lot (the "**Preempted Area**") is not to exceed eight hundred twenty (820) total square feet over-water while maintaining a minimum setback of five (5) feet from the Lot's side boundaries (i.e., no Over-Water Improvements shall be placed or constructed within five (5) feet from a Lot's side boundaries). Notwithstanding the foregoing or anything contained herein to the contrary, no Owner may construct, place, or modify any Over-Water Improvements without first obtaining the prior written approval of the Association and applicable governmental authorities. For the avoidance of doubt, approval by the Association shall not be deemed a representation or warranty by the Association or the Developer that said Over-Water Improvements are in compliance with applicable rules, regulations, ordinances, and/or laws, and ensuring said compliance shall be the sole responsibility of the applicable Owner. A single floating boat lift is permitted with each dock, and is considered an Over-Water Improvement subject to the Preempted Area restrictions, above.
2. No Over-Water Improvements shall be constructed along or within the Ten Mile Canal.
3. Dock and walkway pilings shall be constructed of plastic, concrete or greenheart, non-CCA treated wood or wood wrapped in 30 to 60 mil pvc.
4. Owners should be aware that manatees are found in the Harbor. All personnel associated with the construction of Over-Water Improvements shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injuries to manatees. Any permittee performing work in the Harbor shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.
5. The Standard Manatee Conditions for In-Water Work shall be followed for all in-water activity.
6. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Any approved Florida Fish and Wildlife Conservation Commission ("FWC") awareness signs must be used. One sign measuring at least 3 feet by 4 feet which reads "*Caution: Manatee Area*" must be posted. A second sign measuring at least 8 inches by 11 inches explaining the requirements for "IDLE SPEED/NO WAKE" and the shut-down of in-water operations must be posted in a location prominently visible to all Owners and/or personnel who desire to engage in water-related activities.
7. To reduce the possibility of injuring or killing a manatee during construction, in-water work shall not be performed during the following time of the year: November 15 to March 31.
8. A manatee observer shall be in place when in-water work is being performed. That person shall have experience in manatee observation and be equipped with polarized sunglasses to aid in observation. The manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within fifty feet (50') of any in-water construction activity. Observers shall maintain a log detailing manatee sightings, work stoppages, and other protected species related incidents. These logs and reports shall be submitted to the FWC's Imperiled Species Management Section (ImperiledSpecies@myfwc.com) within thirty (30) days following each in-water dock completion. Movement of a work barge, other associated vessels, or any in-water work shall not be performed after sunset, when the possibility of spotting manatees is negligible.
9. Prior to applying for a building permit for any Over-Water Improvements, a permittee is required to obtain a letter from the Lee County Natural Resources Marine Program stating that the law enforcement mitigation fee has been paid.

10. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment.
11. The Association and the Owners shall provide temporary right of access to Common Areas and Lots for federal and state agencies, including, but not limited to the FWC, the District and the U.S. Fish and Wildlife Service, for the purpose of conducting law enforcement activities and collection of scientific research.

SECTION VIII MANATEES

1. OWNERS SHOULD BE AWARE THAT MANATEES ARE FOUND IN THE HARBOR.
2. All resident boaters are required, when entering, traversing or existing the Harbor, to operate at "IDLE SPEED/NO WAKE" due to the potential of manatee presence. All vessels shall also follow routes of deep water whenever possible. Owners are encouraged to use extra caution at the injunction at the Harbor entrance to Ten Mile Canal. Boaters who do not follow posted speed signs shall be reported to the appropriate local authorities.
3. All in-water operations, including vessels, must be shut-down if a manatee(s) comes within fifty feet (50') of operation. Activities shall not resume until the manatee(s) has moved beyond the 50-foot radius of the operation, or until thirty (30) minutes elapses if the manatee(s) has not reappeared within fifty feet (50') of the operation. Animals must not be herded away or harassed into leaving.
4. Any collision with or injury to a manatee shall be reported immediately to the FWC Hotline at 888-404- FWCC. Collision and/or injury should also be reported to the Fish and Wildlife Service in Vero Beach (772) 562-3909.
5. No later than thirty (30) days prior to the beginning of construction for the first boat dock, the Association shall implement the Manatee Educational Program, which includes the following:
 - a. An FWC-approved Manatee Observation Program (See Paragraph 6, below);
 - b. An FWC-approved Hidden Harbor Estates Preserve Manatee Education and Boater Awareness Program to be provided to every waterfront lot owner with a copy of the Association's governing documents;
 - c. Installation of permanent manatee educational signs, speed zone booklets, and manatee educational brochures. In addition, the Association shall replace the signs in the event the signs fade, become damaged or outdated, and maintain these signs for the life of the facility. The guidelines for installation can be found at: <http://www.mvfwc.com/wildlifehabitats/managed/manatee/signs/>, or can be obtained by contacting the FWC, Imperiled Species Management Section at 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600 or (850) 922-4330;
 - d. Distribution of laminated booklets of the County speed zones to each Owner and other users of the docks, at no charge. The booklets are available free of charge from the Florida Inland Navigation District (561) 627-3386;
 - e. Installation of a sign visible to boaters in the Harbor, warning of the possible presence of manatees and requiring boaters to place the vessel motors in neutral, or turn the engine off, and proceed without power if a manatee is observed within fifty (50) feet of the vessel;
 - f. Installation of a regulatory sign (IDLE SPEED, NO WAKE, with specific reference to regulatory authority) at the entrance to the Harbor; and

- g. Educational materials must be made available at all times, and must be replaced if they become damaged or outdated, and must be maintained for the life of the Association. The on-site location and types of educational materials used must be acceptable to the FWC, which can be contacted at ImperiledSpecies@myfwc.com.
6. The Association shall implement a Manatee Observation Program designed to increase boater awareness of manatees and notify boaters of the presence of manatees within the Harbor. This program shall be implemented upon completion of the first dock and provided on a yearly basis thereafter to all Owners. The program shall be limited to the Harbor and shall include the following stipulations:
- a. The Association shall provide yearly manatee education and boating awareness courses for all Owners.
 - b. The Association shall assign a Manatee Observation Captain to receive the proper training and/or certification to observe and verify the presence of manatees.
 - c. The Manatee Observation Captain shall conduct training courses on a yearly basis to all Owners on the proper techniques for observation and verification of the presence of manatees, as well as avoidance of impacts to manatees.
 - d. By March 1st of each year, the Association shall submit contact information of the Manatee Observation Captain to the District and the FWC or when such persons are changed.
 - e. The Manatee Observation Captain shall implement a program that provides observers during daylight hours from November 15 to March 31, to notify boaters immediately of the presence of manatees and to proceed with caution within the Harbor.
 - f. Owners will provide the Association with self-certification documents upon completion of the yearly education course. The Association shall maintain the documents on-site for review by District staff during regular business hours if required.
7. Violators of these restrictions will be given an initial warning from the Manatee Observation Captain, unless the violation results in the harassment or harm of a manatee. A repeat violation will result in the violator being reported to the appropriate regulatory agency for legal action. A violation that results in the harassment or harm of a manatee will result in immediate reporting to appropriate regulatory agency for legal action.
8. Developer has agreed to cooperate with the Florida Fish and Wildlife Commission in applying for and obtaining designation of the Harbor as a "Manatee Refuge" as defined under the Florida Manatee Sanctuary Act.
9. The manatee speed zone for the Harbor is slow speed, year-round [68C-22.005(2)(d)8, Florida Administrative Code].

SECTION IX ENFORCEMENT, AMENDMENTS AND GENERAL PROVISIONS

1. The Association shall enforce the restrictions set forth herein, as well as other restrictions set forth in the Declaration and in the District Permit, as may be amended from time to time. Further, all enforcement remedies pursuant to Chapter 373, Florida Statutes are available to the District, including the ability to revoke the District Permit and to assess fines and penalties against the Association and the Owners should either party be found to be in non-compliance with the District Permit.

2. The Department of Army, U.S. Army Corps of Engineers ("DOA") shall be a party to any modification, alteration, release or revocation of these deed restrictions pertaining to boat docks, Over-Water Improvements, and enforcement of the restrictions pertaining to same, and shall review and approve as necessary any additional structures or activities that require approval.

Developer reserves the right, without joinder of any Owner, or the Association to amend and modify the foregoing restrictions as may be permitted or allowed by applicable governmental agencies, including, but not limited to the District and DOA.

**South Florida Water Management District
Work Schedule Requirements**

Application No : 180626-10

Page 1 of 1

Mitigation Plan ID: HIDDEN HARBOR
Activity

Due Date

SUBMIT RECORDED THIRD POA AMENDMENT

01-AUG-19

SUBMIT RECORDED RESTRICTIVE COVENANT

01-AUG-19



**Florida Fish
and Wildlife
Conservation
Commission**

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Panama City

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Assistant Executive Director

Jennifer Fitzwater
Chief of Staff

**Division of Habitat and
Species Conservation**
Klpp Frohlich
Director

(850) 488-3831
(850) 921-7793 FAX

*Managing fish and wildlife
resources for their long-term
well-being and the benefit
of people.*

620 South Meridian Street
Tallahassee, Florida
32399-1600
Voice: 850-488-4676

Hearing/speech-impaired:
800-955-8771 (T)
800 955-8770 (V)

MyFWC.com

November 9, 2018

Ms. Jewelene Harris
South Florida Water Management District
2301 McGregor Blvd.
Fort Myers, Florida 33901
jsharris@sfwmd.gov

Subject: Modification request for Hidden Harbor Special Permit Condition #13 and
HOA Covenants regarding floating boat lifts and boat covers under SFWMD
Permit 36-03962-P (Application #150204-19); Lee County

Dear Ms. Harris:

The Florida Fish and Wildlife Conservation Commission (FWC) has reviewed the proposal to modify an existing size restriction for boat lifts to allow for larger boats than the current restrictions (would allow up to 40-foot vessels from 30-foot vessels). FWC has provided comments over the years regarding this project, including when it was originally permitted in 2001. FWC's original concerns about the boat sizes, drafts and horsepower were related to the shallow entrance to the borrow pit/basin and the controlling depths of this waterway system (there is a shallow portion located in the ingress/egress to this system in Mullock Creek). At the time of our original review, it was unknown what typical sizes of boats used (or could use) this system. In 2016, the applicant provided additional information about boat use in the Ten Mile Canal and Mullock Creek area. This report indicated vessels up to the 35-foot range used the waterway, and it is our understanding that the shallow controlling depths of Mullock Creek will, to some extent, limit the size of boats in this system. As such, FWC provided revised comments to the South Florida Water Management District (SFWMD) stating that we did not object to the removal of boat length or size restrictions in this permit. The most significant manatee protective conditions in the existing permit include the vessel number limit, that work is not performed in the basin during the winter, and vessels abide by the slow speed zones in the basin and in Ten Mile Canal and Mullock Creek. If all the manatee protective measures in the permit are followed, it is our opinion that increased lift size for potentially larger vessels will not significantly impact manatees.

We appreciate the opportunity to review this request. If you have questions regarding the content of this letter, please contact me at (850) 922-4330 or by email at Mary.Duncan@myfwc.com.

Sincerely,

Mary Duncan, Biological Administrator I
Imperiled Species Management Section
Division of Habitat and Species Conservation

cc: Jason Adams, Adams & Nichols Ecological Consultants

STAFF REPORT DISTRIBUTION LIST

HIDDEN HARBOR DOCKS

Application No: 180626-10

Permit No: 36-03962-P

INTERNAL DISTRIBUTION

- X Jewelene S. Harris
- X Laura Layman
- X A. Waterhouse, P.E.

EXTERNAL DISTRIBUTION

- X Permittee - S D Hidden Harbor L L C
- X Agent - Adams And Nichols Ecological Consultants
- X Other Interested Party - Freidin & Inglis P.A.
- X Other Interested Party - Lee County Code Enforcement

GOVERNMENT AGENCIES

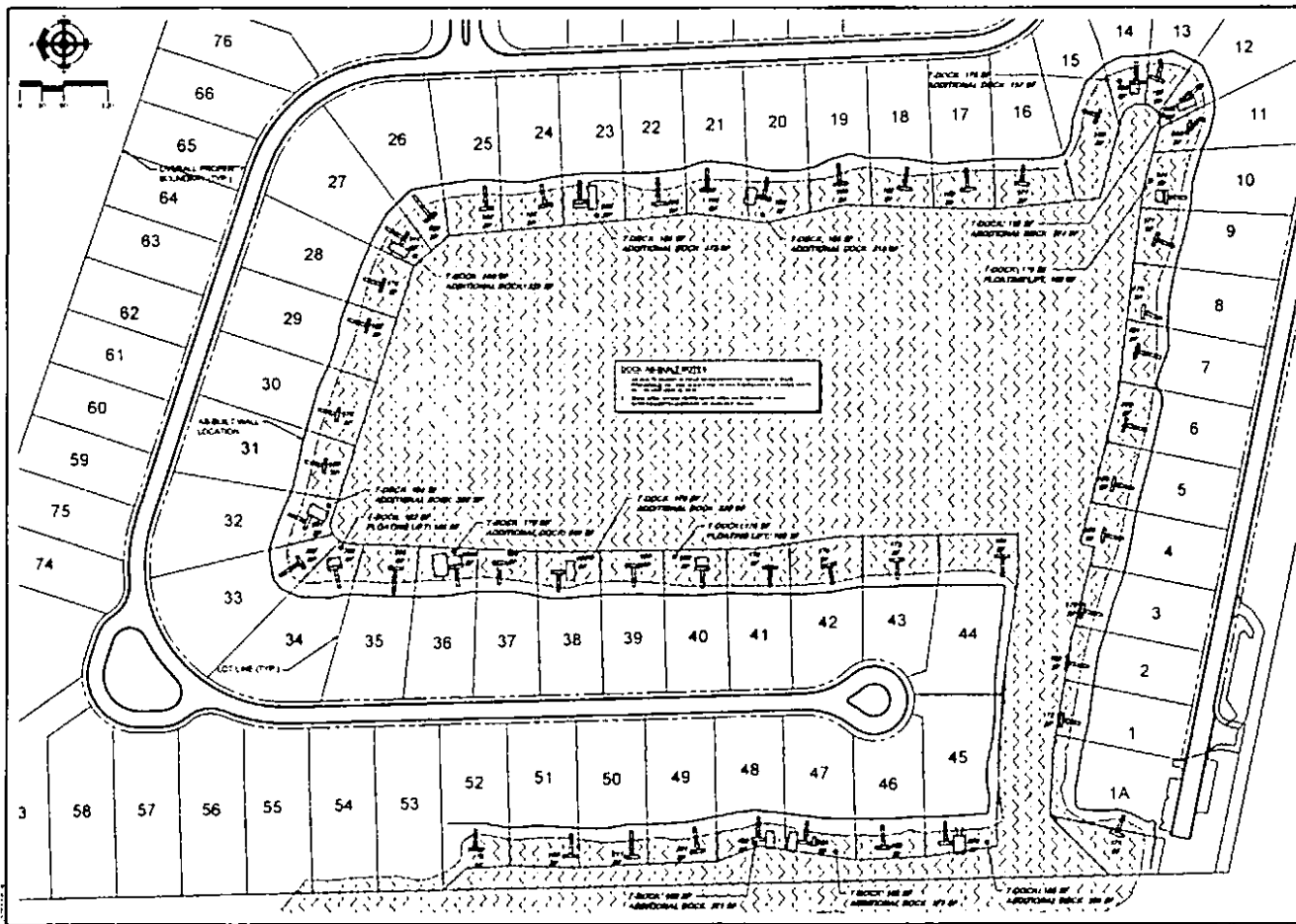
- X Div of Recreation and Park - District 4 - Chris Becker, FDEP
- X US Army Corps of Engineers Permit Section

OTHER INTERESTED PARTIES

- X Audubon of Florida - Charles Lee

EXHIBIT "E"
OF AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS, AND EASEMENTS

ORIGINAL SITE PLAN



DELISI FITZGERALD, INC.
Planning - Engineering - Survey - Mapping

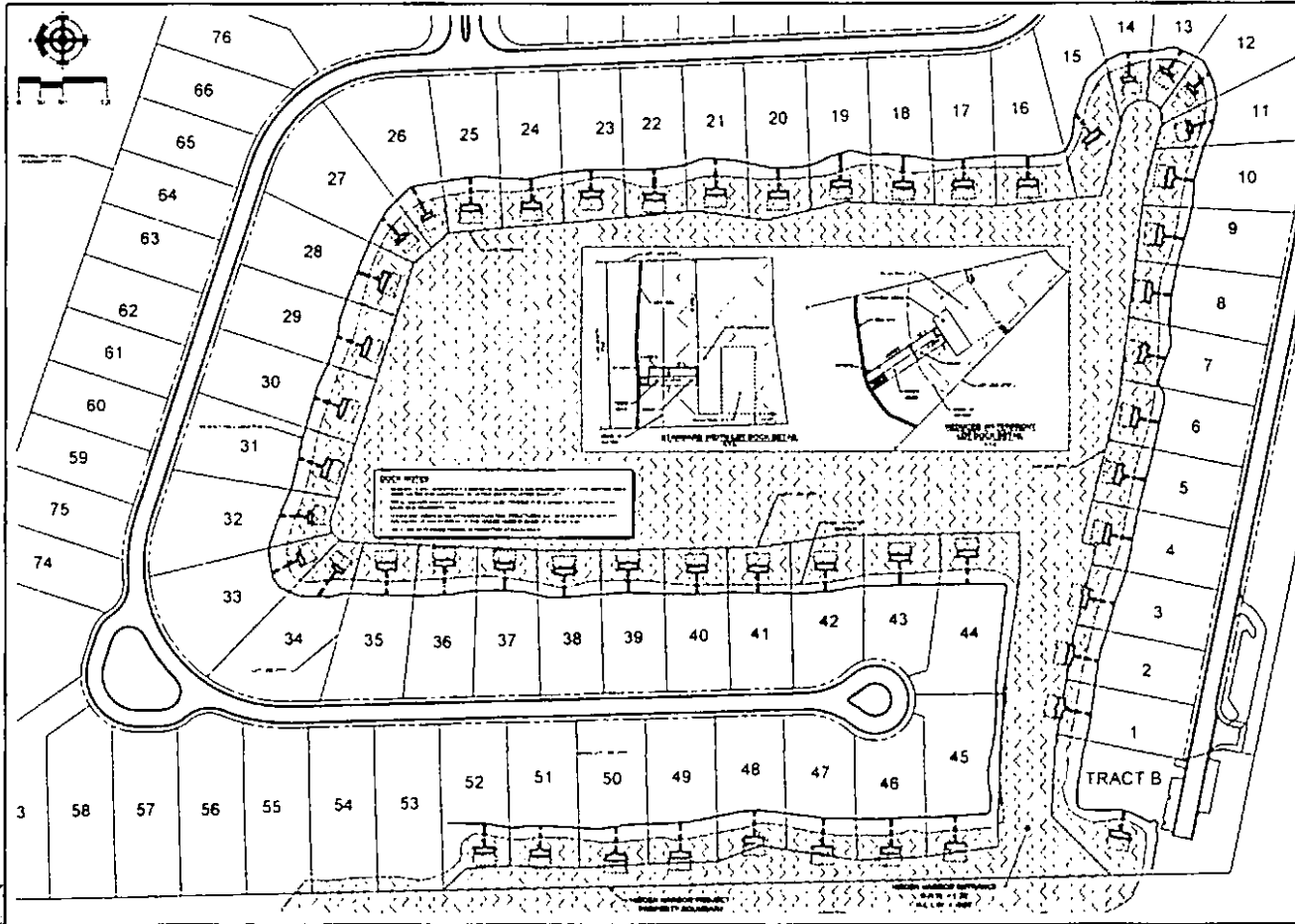
1000 Highway 100
Suite 100
Farmingdale, NY 11735
Tel: 516.241.1100
Fax: 516.241.1101
www.dfi-inc.com

DATE: 01/11/11
BY: [Signature]

HIDDEN HARBOR

DOCK AS BUILT PLAN

NO.	DESCRIPTION	DATE	BY
1	AS BUILT	01/11/11	[Signature]



DELISI FITZGERALD, INC. Planning - Engineering - Project Management 1000 North 1st Street Suite 200 Tallahassee, FL 32301 Phone: 904.438.1234 Fax: 904.438.1235 Email: info@delisifitzgerald.com	
PROJECT: HIDDEN HARBOR LOCATION: 1000 North 1st Street, Tallahassee, FL 32301 DATE: 11/11/2011 DRAWN BY: J. DELISI CHECKED BY: J. FITZGERALD APPROVED BY: J. FITZGERALD	
HIDDEN HARBOR	
PROPOSED DOCK PLAN	

EXHIBIT "F"
OF AMENDED AND RESTATED DECLARATION OF COVENANTS,
RESTRICTIONS, AND EASEMENTS

HARBOR VESSEL RULES

EXHIBIT "E"

VESSEL AND HARBOR RULES AND RESTRICTIONS

SECTION I GENERAL RULES

1. Unless otherwise defined herein, capitalized terms shall have the same meanings set forth in that certain Declaration of Covenants, Restrictions and Easements for Hidden Harbor Estates, recorded as O.R. Instrument No. 2015000133788, Public Records of Lee County, Florida, as amended (the "**Declaration**").
2. Owners and their family, tenants, guests and invitees shall at all times abide by and be subject to these rules and regulations, as they may be amended from time to time by the Association in its sole discretion. Any reference to "Owners" herein shall also apply to their family, tenants, guests and invitees. Owners acknowledge and agree that these rules and regulations are supplemental to, and shall not replace or supersede any terms, conditions, or provisions applicable to the Harbor set forth in the Declaration.
3. Children fifteen (15) years of age or younger must be under the direct supervision and responsibility of their parents or legal guardians at all times while on docks or vessels located within the Harbor.
4. Owners shall be solely responsible for the proper mooring of their vessel in the Harbor and are required to maintain mooring lines in good condition and sufficiently strong to secure the vessel at all times. Any special mooring rules or procedures issued by the Association shall be complied with at all times.
5. Operation and use of the Harbor may be subject to reasonable rules and regulations promulgated by the Association. Areas of the Harbor may also be closed periodically for scheduled maintenance, construction, repairs, or any other reason deemed necessary or appropriate by the Association.
6. Owners shall be solely responsible for all costs and fees associated with the removal of unlicensed or illegally docked vessels in the Harbor.
7. Absolutely no fireworks are permitted anywhere on the Harbor unless part of a fireworks exhibit organized and conducted by the Association or its agents.
8. Refuse, trash and/or garbage shall not be thrown overboard. Garbage shall be deposited in cans supplied for that purpose, except engine oils, filters, spirits, combustible liquids, fish and bait, etc. The disposal of these items in the proper and approved manner is the responsibility of the Owner. Failure to properly dispose of these items will be reported to the appropriate state or federal authorities for prosecution under applicable environmental laws. In addition, the Owner will be responsible for all cleanup costs and is subject to permanent removal of his or her vessel from the Land. No person shall discharge sewage, waste water, fuel, oil, spirits, flammable liquids or oily bilge water into the waters and/or adjacent channels. Solvents and cleaning substances may be kept in dock boxes (if any) if stored in a safe manner and in accordance with all applicable fire codes and insurance requirements.

9. The Association may permit the police, the U.S. Coast Guard, Florida Fish and Wildlife, and similar watercraft to be docked in any portions of the Land designated for such use by the Association.
10. Diving and/or jumping from the docks or other areas of waterfront property into the Harbor is prohibited. Owners shall use caution when swimming in the Harbor and shall do so at their own risk. The Association may adopt rules and regulations to ensure the safety of the Owners.
11. Fishing shall only be permitted in the Harbor in those places specifically designated by the Association, if any, and only during such times as approved by the Association. No fish or other marine life of any kind shall be cleaned, prepared or processed in any manner in the Harbor or on any of the docks, except in those areas, if any, specifically designated for the same by the Association. Fish may be cleaned on a vessel, provided that it is done in accordance with the rules and regulations prescribed by the Association and provided that the vessel is properly cleaned afterward.
12. Violation of any of these rules and regulations by any Owner or such Owner's family, tenants, guests or invitees, which might injure a person, cause damage to property, be considered in bad taste by Association management, or cause harm to the good reputation of the Association, shall entitle the Association to exercise any remedy available under the Declaration or at law or in equity and shall be cause for other disciplinary action by the Association.
13. These rules and regulations shall neither apply to nor operate to interfere with any lawful development, construction, management, sales, re-sales, maintenance, or repair activities of the Developer or any of its successors or assigns, including the operations and activities of the Association. All of these rules and regulations shall apply to all Owners, even if not specifically stated in portions hereof. The Association shall be permitted, but not required, to grant relief to one or more Owners from specific rules and regulations upon written request thereof, where good cause is shown in the sole opinion of the Board.

SECTION II

VESSEL AND BOAT DOCK RESTRICTIONS

1. The total number of boat docks, inclusive of all shoreline and upland storage, shall be limited to fifty-three (53), with only one motorized vessel, including jet-skis and personal watercraft, permitted to be moored at each dock at any given time. Boat docks (together with related, authorized Over-Water Improvements, defined below) shall be appurtenant to the Lots which they abut. Any number of non-motorized vessels, such as sailboats, paddle boats, canoes, kayaks and model sized remote-control boats are permitted to use the Harbor.
2. Not all Lots are eligible to construct a boat dock. A one-slip single facility dock (together with related, authorized Over-Water Improvements, defined below) may be constructed within the lot boundaries of the Amenity Lot and Lots 1 through 52 of Hidden Harbor Estates (as depicted on the Site Plan attached to the Declaration as Exhibit "E"), up to a maximum of fifty-three (53) boat docks (subject to the construction and dimensional limitations set forth herein, including, without limitation, in Article VII, below), unless otherwise approved and allowed by the Association, the District, and other applicable agencies. Each dock eligible Lot is authorized to construct one (1) "T" boat dock, together with certain authorized Over-Water Improvements (defined below) pursuant to the terms and conditions set forth herein, the Declaration, and the District Permit, all as may be amended from time to time. No Owner may construct or modify a dock or any bulkheads, moorings, pilings, boat shelters, or other over-water improvements of any kind

(collectively, "**Over-Water Improvements**") without first obtaining the prior written approval of the Association and applicable governmental authorities. No other Over-Water Improvements that would provide boating access are authorized along the remaining shoreline of Hidden Harbor Estates. Unless otherwise approved by the Association and applicable governmental agencies, the only future utilization of the remaining undeveloped shoreline of Hidden Harbor Estates will be as a purely natural area.

3. Over-Water Improvements are for the private use of Owners, their family and their guests.
4. No Owner may install a boatlift or davit (even if not over water) for the dry storage of vessels without first obtaining the prior written approval of the Association and applicable governmental authorities. All boat lifts and davits shall comply with uniform design specifications prescribed by the Association.
5. Docking facilities shall not be used for liveaboard purposes.
6. No commercial activity or business whatsoever shall be conducted or carried on any Over-Water Improvement. The foregoing shall not apply to the sales or leasing activities of the Developer or of any lawful dredging operation. Leasing docks in accordance with the Declaration shall not constitute commercial activity. Notwithstanding, docks may not be leased except in connection with the simultaneous leasing of an Owner's entire Lot pursuant to the terms and restrictions set forth in the Declaration.
7. The Association shall have the right to inspect any vessel in the Harbor to determine its compliance with all applicable municipal, county, state and federal fire, safety and other regulations. The Association shall have the right (but not be required) to remove any vessel from the Harbor which fails to comply with said requirements. The cost to remove any vessel pursuant to this Section shall be assessed against the appurtenant Lot as a Specific Assessment.
8. From time to time, the Association may require that all vessels be removed from the Harbor for maintenance, repairs and dredging at which time the boat docks and/or other Over-Water Improvements may be vacated for such period as may be necessary.

SECTION III VESSEL MAINTENANCE, REPAIR, OPERATION, AND DOCKING

1. All vessels docked on a long-term basis must be registered and adequately insured in the name of the Owner. Specifically, all vessels must: (a) be fully equipped and operable for operation (except during a period of temporary repairs not to exceed five (5) days); (b) comply with all licensing and registration requirements; and (c) be fully insured against bodily injury and property damage, with coverage of at least \$1,000,000.00 per occurrence. Notwithstanding any provision herein to the contrary, the Association shall not have any obligation to monitor or otherwise verify that any Owner has procured and/or is maintaining the insurance policies required by this Section. A copy of the vessel registration certificate and certificate of insurance shall be submitted upon the request of the Association. Corporate-owned vessels must submit corporate officer information, if requested by the Association.
2. Owners and invitees shall adhere to all speed regulations when operating within the Harbor. Vessels operating in the Harbor after sunset shall be properly equipped with navigational lights and shall be operated in accordance with all applicable provisions of federal and state maritime operating procedures. NO VESSELS SHALL BE OPERATED IN THE HARBOR SO AS TO

CREATE A WAKE, AND UNDER NO CIRCUMSTANCES SHALL A VESSEL BE OPERATED IN EXCESS OF THE ESTABLISHED SPEED LIMIT AND/OR SPEED NECESSARY FOR SAFE OPERATION, WHICHEVER IS SLOWER.

3. Each vessel must have sanitary equipment on board as is required by all applicable federal, state, and local authorities. In no event, whatsoever, may a boater discharge sewage or any foreign substance into the waters of the Harbor. The Association has the right (but not the obligation) to inspect all vessels for compliance.
4. There will be no hull scraping or cleaning of metal-based bottom paint on any vessel while it is docked or otherwise located on the Harbor. It is permissible to clean the non-painted running gear surfaces (props, shafts, and rudders). Vessel maintenance or repair activities that are reasonably anticipated to result in any discharges or release of oils or greases associated with engine and hydraulic repairs, and release of metal-based bottom paints associated with hull scraping, cleaning, and painting shall only occur after removal of the vessel being maintained or repaired from the water. Exceptions shall only be made in emergency conditions which have resulted in or can result in the sinking of a vessel. Minor repairs and maintenance that will not cause or contribute to the release of water pollutants and which are performed by Owners or qualified marine mechanics are allowed.
5. In-water hull maintenance, including cleaning of boat hulls, throughout the Harbor, shall be limited to use of sponges or plastic scouring pads (Starbrite, Hol-tite, or similar). The use of metal scrapers, stiff brushes, or similar implements to remove barnacles or extensive algae growth is prohibited.
6. Owners mooring vessels in the Harbor shall use only bottom paints that meet all current state and federal requirements.
7. To minimize the input of oil and grease into the water body through the discharge of bilge water, each vessel moored for more than two (2) consecutive days or seven (7) days in any thirty (30) day period, shall have installed, in the hull, absorbent pads that trap oil and grease but not water. The absorbent pads shall be replaced at intervals recommended by the manufacturer or more frequently if deemed necessary based on inspection by the Association. If manufacturer does not recommend a replacement frequency for this stated use, the absorbent pads shall be replaced not less frequently than every ninety (90) days or, at the election of the Association, in accordance with a replacement schedule established by the Association according to commercially-reasonable industry standards. The Owner shall discard all used pads in a manner that prevents any oil or grease from entering the water body.
8. During hurricane, tropical storm, and/or other high velocity wind threats, each Owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Developer, the Association or any other applicable agency. If a vessel sinks as a result of a storm, or for any other reason, the Owner of the respective vessel must remove the sunken vessel immediately after the occurrence of such event and, if not so removed within twenty-four (24) hours after the sinking, the Association may (but shall not be obligated to) remove the sunken vessel and impose a specific assessment against the Owner for the cost of such removal. Each Owner agrees to indemnify, defend and save the Association, its agents, employees and designees for and from any and all loss or damage incurred in connection with the exercise or nonexercise of the Association's rights hereunder. If an Owner plans to be absent during the hurricane season, such Owner must prepare his or her dock and secure or remove, as appropriate, his or her vessel prior

to his or her departure in accordance with the standards established by the Board (or in the absence thereof, with all due care), or designate a responsible firm or individual to care for his or her vessel should there be a hurricane or other storm, and furnish the Association with the name, address and telephone number of such firm or individual. Such firm or individual shall be subject to the approval of the Association. An Owner shall be liable for all damages caused to the Association property or other Owner's property due the Owner's improper preparation or failure to remove, as the case may be, of his or her vessel for hurricanes, tropical storms, and/or other high velocity wind threats.

9. The Owners shall be responsible for the perpetual maintenance of their respective Over-Water Improvements. Maintenance shall be conducted in perpetuity to ensure that all structures and signage are in proper working order and functioning as approved. The Association shall be responsible for all signage and educational materials.
10. In no event shall any Owner violate any applicable District Permit conditions or requirements. Any Owner who violates District Permit conditions or requirements shall be deemed in violation of and subject to enforcement hereunder, including, but not limited to, the removal of any vessel from the Harbor.

SECTION IV UTILITIES, FEES, AND CHARGES

1. The electrical boxes, meters, electricity and water serving each boat dock (or any other Over-Water Improvements) shall be an expense payable by the Owner entitled to the exclusive use of such dock (or any other Over-Water Improvements).

SECTION V LOSS OR DESTRUCTION OF PROPERTY OR INSTANCES OF PERSONAL INJURY

1. Each Owner, as a condition of Harbor use, and each family member, tenant and guest, as a condition of invitation to the Harbor, assumes sole responsibility for their property. The Association shall not be responsible for any loss or damage to any personal property used or stored at or upon the Harbor.
2. Each Owner using the Harbor adjacent to the Harbor assumes all risk of injury, loss or damage to himself or herself, his or her guests and invitees, and to his or her vessel or its appurtenances or contents, including any loss or damage arising out of or due to adverse weather conditions. Each Owner agrees to indemnify and to hold harmless the Developer and the Association against any such loss, damage, or claim arising out of the Owner's, or such Owner's family members', tenants', guests', or invitees' use of the Harbor or the operation of a vessel at or around the Harbor, whether or not the loss, damage or claim results from either the Developer's or the Association's negligence or from adverse weather conditions.
3. Any Owner, family member, tenant, guest, or other person who, in any manner, makes use of or accepts the use of any apparatus, appliance, facility, privilege, or service whatsoever owned, leased, or operated by the Association, or who engages in any contest, game, function, exercise, competition, or other activity operated, organized, arranged, or sponsored by the Association, in or around the Harbor, shall do so at his or her sole risk. The Owner, his or her family members, and guests shall hold the Developer, the Association, and the Developer's and Association's partners, directors, officers, employees, affiliates, representatives, and agents harmless from any and all loss, cost, claim, injury, damage, or liability sustained or incurred by the Owner, resulting

therefrom and from any act or omission, whether due to negligence or otherwise, of the Developer, the Association, or the Developer's or Association's partners, directors, officers, employees, affiliates, representatives, or agents.

SECTION VI GUEST PRIVILEGES

1. The Association reserves the right to limit the number of guests that accompany an Owner on any given day and without prior notice. Guest privileges may be denied, withdrawn, or revoked at any time, without prior notice, for reasons considered sufficient by the Board or Association management in its sole and absolute discretion. An Owner is prohibited from charging a guest or receiving any consideration or benefit from the guest for the guest's use of the Owner's Over-Water Improvements, except in the event that said Over-Water Improvements are leased in conjunction with the leasing of the Owner's Lot pursuant to the terms set forth in the Declaration. During the leasing of the Owner's Lot, an Owner's right to use the appurtenant Over-Water Improvements is assigned to the tenant for the duration of the lease term. Any violation of this rule is subject to disciplinary action by the Association.
2. The Association reserves the right to limit the number of times or days that a guest may use an Owner's Over-Water Improvements each year. A particular individual using an Owner's Over-Water Improvements as a day guest must be registered by the sponsoring Owner. The Association reserves the right to require identification by each day guest.

SECTION VII DOCK CONSTRUCTION

1. The total, over-water area covered by any and all Over-Water Improvements for a given Lot (the **"Preempted Area"**) is not to exceed eight hundred twenty (820) total square feet over-water while maintaining a minimum setback of five (5) feet from the Lot's side boundaries (i.e., no Over-Water Improvements shall be placed or constructed within five (5) feet from a Lot's side boundaries). Notwithstanding the foregoing or anything contained herein to the contrary, no Owner may construct, place, or modify any Over-Water Improvements without first obtaining the prior written approval of the Association and applicable governmental authorities. For the avoidance of doubt, approval by the Association shall not be deemed a representation or warranty by the Association or the Developer that said Over-Water Improvements are in compliance with applicable rules, regulations, ordinances, and/or laws, and ensuring said compliance shall be the sole responsibility of the applicable Owner. A single floating boat lift is permitted with each dock, and is considered an Over-Water Improvement subject to the Preempted Area restrictions, above.
2. No Over-Water Improvements shall be constructed along or within the Ten Mile Canal.
3. Dock and walkway pilings shall be constructed of plastic, concrete or greenheart, non-CCA treated wood or wood wrapped in 30 to 60 mil pvc.
4. Owners should be aware that manatees are found in the Harbor. All personnel associated with the construction of Over-Water Improvements shall be instructed about the presence of manatees and manatee speed zones, and the need to avoid collisions with and injuries to manatees. Any permittee performing work in the Harbor shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under

the Marine Mammal Protection Act, the Endangered Species Act, and the Florida Manatee Sanctuary Act.

5. The Standard Manatee Conditions for In-Water Work shall be followed for all in-water activity.
6. Temporary signs concerning manatees shall be posted prior to and during all in-water project activities. All signs are to be removed by the permittee upon completion of the project. Any approved Florida Fish and Wildlife Conservation Commission ("FWC") awareness signs must be used. One sign measuring at least 3 feet by 4 feet which reads "*Caution: Manatee Area*" must be posted. A second sign measuring at least 8 inches by 11 inches explaining the requirements for "IDLE SPEED/NO WAKE" and the shut-down of in-water operations must be posted in a location prominently visible to all Owners and/or personnel who desire to engage in water-related activities.
7. To reduce the possibility of injuring or killing a manatee during construction, in-water work shall not be performed during the following time of the year: November 15 to March 31.
8. A manatee observer shall be in place when in-water work is being performed. That person shall have experience in manatee observation and be equipped with polarized sunglasses to aid in observation. The manatee observer must be on site during all in-water construction activities and will advise personnel to cease operation upon sighting a manatee within fifty feet (50') of any in-water construction activity. Observers shall maintain a log detailing manatee sightings, work stoppages, and other protected species related incidents. These logs and reports shall be submitted to the FWC's Imperiled Species Management Section (ImperiledSpecies@myfwc.com) within thirty (30) days following each in-water dock completion. Movement of a work barge, other associated vessels, or any in-water work shall not be performed after sunset, when the possibility of spotting manatees is negligible.
9. Prior to applying for a building permit for any Over-Water Improvements, a permittee is required to obtain a letter from the Lee County Natural Resources Marine Program stating that the law enforcement mitigation fee has been paid.
10. Siltation or turbidity barriers shall be made of material in which manatees cannot become entangled, shall be properly secured, and shall be regularly monitored to avoid manatee entanglement or entrapment.
11. The Association and the Owners shall provide temporary right of access to Common Areas and Lots for federal and state agencies, including, but not limited to the FWC, the District and the U.S. Fish and Wildlife Service, for the purpose of conducting law enforcement activities and collection of scientific research.

SECTION VIII MANATEES

1. OWNERS SHOULD BE AWARE THAT MANATEES ARE FOUND IN THE HARBOR.
2. All resident boaters are required, when entering, traversing or existing the Harbor, to operate at "IDLE SPEED/NO WAKE" due to the potential of manatee presence. All vessels shall also follow routes of deep water whenever possible. Owners are encouraged to use extra caution at the injunction at the Harbor entrance to Ten Mile Canal. Boaters who do not follow posted speed signs shall be reported to the appropriate local authorities.

3. All in-water operations, including vessels, must be shut-down if a manatee(s) comes within fifty feet (50') of operation. Activities shall not resume until the manatee(s) has moved beyond the 50-foot radius of the operation, or until thirty (30) minutes elapses if the manatee(s) has not reappeared within fifty feet (50') of the operation. Animals must not be herded away or harassed into leaving.
4. Any collision with or injury to a manatee shall be reported immediately to the FWC Hotline at 888-404- FWCC. Collision and/or injury should also be reported to the Fish and Wildlife Service in Vero Beach (772) 562-3909.
5. No later than thirty (30) days prior to the beginning of construction for the first boat dock, the Association shall implement the Manatee Educational Program, which includes the following:
 - a. An FWC-approved Manatee Observation Program (See Paragraph 6, below);
 - b. An FWC-approved Hidden Harbor Estates Preserve Manatee Education and Boater Awareness Program to be provided to every waterfront lot owner with a copy of the Association's governing documents;
 - c. Installation of permanent manatee educational signs, speed zone booklets, and manatee educational brochures. In addition, the Association shall replace the signs in the event the signs fade, become damaged or outdated, and maintain these signs for the life of the facility. The guidelines for installation can be found at: <http://www.myfwc.com/wildlifehabitats/managed/manatee/signs/>, or can be obtained by contacting the FWC, Imperiled Species Management Section at 620 South Meridian Street, 6A, Tallahassee, Florida 32399-1600 or (850) 922-4330;
 - d. Distribution of laminated booklets of the County speed zones to each Owner and other users of the docks, at no charge. The booklets are available free of charge from the Florida Inland Navigation District (561) 627-3386;
 - e. Installation of a sign visible to boaters in the Harbor, warning of the possible presence of manatees and requiring boaters to place the vessel motors in neutral, or turn the engine *off*, and proceed without power if a manatee is observed within fifty (50) feet of the vessel;
 - f. Installation of a regulatory sign (IDLE SPEED, NO WAKE, with specific reference to regulatory authority) at the entrance to the Harbor; and
 - g. Educational materials must be made available at all times, and must be replaced if they become damaged or outdated, and must be maintained for the life of the Association. The on-site location and types of educational materials used must be acceptable to the FWC, which can be contacted at ImperiledSpecies@myfwc.com.
6. The Association shall implement a Manatee Observation Program designed to increase boater awareness of manatees and notify boaters of the presence of manatees within the Harbor. This program shall be implemented upon completion of the first dock and provided on a yearly basis thereafter to all Owners. The program shall be limited to the Harbor and shall include the following stipulations:

- a. The Association shall provide yearly manatee education and boating awareness courses for all Owners.
 - b. The Association shall assign a Manatee Observation Captain to receive the proper training and/or certification to observe and verify the presence of manatees.
 - c. The Manatee Observation Captain shall conduct training courses on a yearly basis to all Owners on the proper techniques for observation and verification of the presence of manatees, as well as avoidance of impacts to manatees.
 - d. By March 1st of each year, the Association shall submit contact information of the Manatee Observation Captain to the District and the FWC or when such persons are changed.
 - e. The Manatee Observation Captain shall implement a program that provides observers during daylight hours from November 15 to March 31, to notify boaters immediately of the presence of manatees and to proceed with caution within the Harbor.
 - f. Owners will provide the Association with self-certification documents upon completion of the yearly education course. The Association shall maintain the documents on-site for review by District staff during regular business hours if required.
7. Violators of these restrictions will be given an initial warning from the Manatee Observation Captain, unless the violation results in the harassment or harm of a manatee. A repeat violation will result in the violator being reported to the appropriate regulatory agency for legal action. A violation that results in the harassment or harm of a manatee will result in immediate reporting to appropriate regulatory agency for legal action.
 8. Developer has agreed to cooperate with the Florida Fish and Wildlife Commission in applying for and obtaining designation of the Harbor as a "Manatee Refuge" as defined under the Florida Manatee Sanctuary Act.
 9. The manatee speed zone for the Harbor is slow speed, year-round [68C-22.005(2)(d)8, Florida Administrative Code].

SECTION IX ENFORCEMENT, AMENDMENTS AND GENERAL PROVISIONS

1. The Association shall enforce the restrictions set forth herein, as well as other restrictions set forth in the Declaration and in the District Permit, as may be amended from time to time. Further, all enforcement remedies pursuant to Chapter 373, Florida Statutes are available to the District, including the ability to revoke the District Permit and to assess fines and penalties against the Association and the Owners should either party be found to be in non-compliance with the District Permit.
2. The Department of Army, U.S. Army Corps of Engineers ("DOA") shall be a party to any modification, alteration, release or revocation of these deed restrictions pertaining to boat docks, Over-Water Improvements, and enforcement of the restrictions pertaining to same, and shall review and approve as necessary any additional structures or activities that require approval.

Developer reserves the right, without joinder of any Owner, or the Association to amend and modify the foregoing restrictions as may be permitted or allowed by applicable governmental agencies, including, but not limited to the District and DOA.