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**CERTIFICATE OF AMENDMENT OF SUBORDINATED DECLARATION OF  
RESTRICTIONS AND PROTECTIVE COVENANTS  
FOR  
SAIL HARBOUR AT HEALTHPARK HOMEOWNERS' SUB-ASSOCIATION, INC.**

THE UNDERSIGNED being the President of SAIL HARBOUR AT HEALTHPARK HOMEOWNERS' SUB-ASSOCIATION, INC., a Florida non-profit corporation, does hereby certify that the attached Amendments to the Declaration of Restrictions and Protective Covenants, originally recorded in Official Record Book 4587, at Page 3260, et. seq., of the Public Records of Lee County, Florida, and the Amendments to the Articles of Incorporation and Bylaws of Sail Harbour at Healthpark Homeowners' Sub-Association, Inc., were duly approved, adopted and enacted by the affirmative vote of the proper percentage of voting interests in the Association at a members meeting called for that purpose at which a quorum was present held on the 16<sup>th</sup> day of November, 2009. Dated this 9<sup>th</sup> day of December, 2009.

WITNESSES:

(Sign) [Signature]

(Print) Andrea L. Francis

(Sign) [Signature]

(Print) Darlene Campbell

SAIL HARBOUR AT HEALTHPARK  
HOMEOWNERS' SUB-ASSOCIATION,  
INC.

BY: [Signature]  
President of the Association  
Thomas Jazowski (Print Name)

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument, was acknowledged before me this 9<sup>th</sup> day of December 2009 by Tom Jazowski, as President of SAIL HARBOUR AT HEALTHPARK HOMEOWNER'S SUB-ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation. Said person is personally known to me or has produced as identification and did take an oath.

NOTARY PUBLIC: [Signature]

NOTARY PUBLIC-STATE OF FLORIDA  
Jeanne Roedding  
Commission #DD836737  
Expires: DEC. 09, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE  
AND PROTECTIVE COVENANTS  
FOR SAIL HARBOUR AT HEALTH  
PARK HOMEOWNERS' SUB-  
ASSOCIATION, INC.**

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

**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
SAIL HARBOUR AT HEALTH PARK HOMEOWNERS' SUB-ASSOCIATION, INC.**

**KNOW ALL MEN BY THESE PRESENTS** that on February 10, 1995 the original Declaration of Restrictive and Protective Covenants for Sail Harbour at Health Park Homeowners' Sub-Association, Inc., were recorded in Official Record Book 4587, at Page 3260 *et seq.*, of the Public Records of Lee County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration (hereinafter "Sail Harbour" or the "Property") is legally described as:

Sail Harbour at Health Park Sub-Division Plat, recorded at instrument number 2005000068039, and all amendments thereto, Public Record of Lee County, Florida.

No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a lot or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a lot or the Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

**1. DEFINITIONS.** The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

**1.1 "Assessments"** means a share of the funds required for the payment of common expenses and individual expenses which from time to time are assessed by the Association against an owner as Regular, Special and Individual Assessments.

**1.2 "Articles" and "Bylaws"** as used herein, means the Articles of Incorporation and the Bylaws of Sail Harbour at Health Park Homeowners' Sub-Association, Inc., as amended from time to time. A copy of the Amended and Restated Articles of Incorporation and Bylaws are attached hereto as Exhibit "A" and "B" respectively.

1.3 **"Association"** means Sail Harbour at Health Park Homeowners' Sub-Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Common Areas and amenities at Sail Harbour.

1.4 **"Board"** means the Board of Directors responsible for the administration of Sail Harbour at Health Park Homeowners' Sub-Association, Inc.

1.5 **"Common Areas"** means all real property including any improvements and fixtures thereon, owned, leased or the use of which has been granted or dedicated to the Association for the common use and enjoyment of its members. The Common Areas of the Association include all land described above and subject to this Declaration save and except for the individual Lots. The Common Areas include but are not limited to the storm water management and drainage features and all other areas shown on the Plat of Sail Harbour at Health Park recorded at instrument number 2005000068039, public record of Lee County, Florida except the Lots.

1.6 **"Common Expenses"** means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common expenses of the Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair and replacement of the Common Areas, other expenses declared by the governing documents to be common expenses, and any other valid expenses or debts of the common property as a whole of the Association which are assessed against the lot owners.

1.7 **"Common Surplus"** means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues over the common expenses.

1.8 **"Community Development District or CDD"** means the Sail Harbour Community Development District created pursuant to Chapter 190, Florida Statutes. All owners are subject to the terms and conditions of the CDD.

1.9 **"Declaration"** means this Declaration as amended from time to time.

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

(A) One natural person.

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

(C) Two or more natural persons who commonly and regularly reside together as a single housekeeping unit.

**1.11    "Governing Documents"** means and includes this Declaration, the Articles and Bylaws, and all recorded exhibits thereto, as amended from time to time and any Board adopted Rules.

**1.12    "Guest"** means any person who is not the owner or a lessee of a home or a member of the owner's or lessee's family, who is physically present in, or occupies a home on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

**1.13    "Home" or "Unit"** means a residential dwelling unit intended for residential use which is constructed on the properties.

**1.14    "Institutional Mortgagee"** means the mortgagee (or its assignee) of a mortgage against a lot, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a lot which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

**1.15    "Lease"** means the grant by a residential owner of a temporary right of use of the owner's home for valuable consideration.

**1.16    "Lot" or "Parcel"** means the four hundred and seventy three (473) lots or parcels of land located within the real property legally described on the Plat of Sail Harbour at Health Park recorded at instrument number 2005000068039, public record of Lee County, Florida as amended. That description is hereby incorporated by reference. No additional land is being added by this instrument and no land is being removed by this instrument. All of said land has been subdivided for residential use with fee simple title to each lot having been conveyed to an owner for use as a residential homesite. No lot shall include the Common Areas. No lot may be subdivided or joined together without the consent of the Association. The lots may be depicted and numbered on sketches or surveys as recorded in the Public Records of Lee County, Florida.

**1.17    "Master Association"** shall mean and refer to HealthPark Florida Property Owner's Association, Inc., a Florida non-profit corporation, its successors and assigns. The Association and its members shall be subject to the applicable rules, regulations and design criteria of the Master Association and all recorded covenants and restrictions including but not limited to the Master Declaration recorded in O.R. Book 2320, Page 726 et seq. Public Record of Lee County, Florida.

**1.18    "Members"** means and refers to those persons who are entitled to membership in the Association as provided in its Articles of Incorporation and Bylaws.

1.19 **"Occupy"** when used in connection with a home, means the act of staying overnight in a home. **"Occupant"** is a person who occupies a home.

1.20 **"Owner" or "Parcel Owner"** means the record owner of legal title to a lot.

1.21 **"Primary Occupant"** means the natural person approved for occupancy of a home when title to the lot is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person. When used in reference to a home owned in one of the forms listed above, the term "primary occupant" shall be synonymous with the term "owner".

1.22 **"Properties" or "Community"** means all the real property which is subject to this Declaration.

1.23 **"Rules and Regulations"** shall mean the collective rules and regulations established over time by the Board of the Association and Master Association and its various committees governing the use of the Property and the Units. Rules adopted by the Board do not need to be recorded in the public record.

1.24 **"Structure"** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation swimming pools, fences, flagpoles, antennas, playground equipment, and storage sheds.

1.25 **"Voting Interests"** means the voting rights distributed to the Association members pursuant to the Bylaws.

1.26 **"Water Management System" "Water Management Tracts" (WMTs)** means and refers to constructed surface water and/or underground systems and facilities for the drainage and/or storage of surface water throughout Sail Harbour. Water Management Tracts (WMTs) shall mean the parcels of real property which are designed and constructed to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, use, or reuse rainfall runoff water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect quantity and quality of discharges from the Properties as permitted pursuant to the Lee County Utilities District and the South Florida Water Management District.

## 2. ASSOCIATION.

2.1 **Membership.** Every owner of a lot shall be a member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to

abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the rules and regulations of the Association, as amended from time to time.

**2.2 Voting Rights.** Voting rights are set forth in the Bylaws of the Association.

**2.3 Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached to this Declaration as Exhibit "A".

**2.4 Bylaws.** A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration as Exhibit "B".

**2.5 Delegation of Management.** The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include but are not limited to the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the Common Areas with funds made available by the Association for such purposes.

**2.6 Acts of the Association.** Unless the approval or affirmative vote of the lot owners is specifically made necessary by some provision of the law or the governing documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the lot owners. The officers and Directors of the Association have a fiduciary relationship to the lot owners. A lot owner does not have the authority to act for or bind the Association by reason of being a lot owner.

**2.7 Powers and Duties.** The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the governing documents. The Association may contract, sue or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Common Areas. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the owners.

**2.8 Official Records.** The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

**2.9 Purchase of Lots.** The Association has the power to purchase lots in Sail Harbour in connection with the foreclosure of an Association lien for assessments, charges or fines or any other

foreclosure of an interest that affects the Association's lien and to hold, lease, mortgage, encumber or convey them with such power to be exercised by the Board of Directors without prior approval of the



members.

**2.10 Interests in Real Property.** The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 2.9 above, the power to acquire, encumber or convey ownership interests in real property shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Association.

**2.11 Disposition of Personal Property.** Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the lot owners.

**2.12 Roster.** The Association shall maintain a current roster of names and mailing addresses of lot owners, based upon information supplied by the lot owners. Lot owners are responsible for notifying the Association of any change in their mailing address. All such notices shall be in writing. A copy of the roster shall be made available to any member upon request.

**3. ASSESSMENTS.** The provision of this section shall govern assessments payable by all owners of lots, for the common expenses of the Association not directly attributable to one of the lots.

**3.1 Covenant to Pay Assessments.** Each owner of a lot by the act of becoming an owner covenants and agrees, and each subsequent owner of any lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

(A) The lot owner's share of annual assessments based on the annual budget adopted by the Board of Directors of the Association ("Regular Assessments");

(B) The lot owner's pro rata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments ("Special Assessments");

(C) Any charges properly levied against individual lot owner(s) ("Individual Assessments") without participation from some or all other owners.

Assessments and charges shall be established and collected as provided herein and elsewhere in the governing documents. The owner of each lot, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 3.10 below, whenever title to a lot is transferred

for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No

owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the governing documents as to Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No lot owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his lot. No owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law.

**3.2 Purposes of Assessments.** The assessments levied by the Association shall be used for the purposes of promoting the general welfare of the lot owners and residents of Sail Harbour; to operate, maintain, repair, improve, construct, and preserve (on a non-profit basis) the Common Areas owned of the Association for the benefit of its members, their guests, tenants and invitees; and to perform all other duties and responsibilities of the Association as provided in the governing documents. Common expenses also include the funds necessary to provide reserve accounts for:

(A) renovation or major repairs to the Common Areas; and

(B) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

**3.3 Share of Assessments, Regular, Special and Individual.** The owners of each lot shall be liable for a one four hundred and seventy third ( $1/473^{\text{rd}}$ ) share of the regular annual and special assessments levied by the Association for common expenses of the Association. All monetary fines assessed against an Owner pursuant to the governing documents, or any expense or charge of the Sail Harbour at Health Park Homeowners' Association attributable to or on behalf of an individual owner pursuant to the governing documents, shall be an Individual Assessment and shall become a lien against such owner's lot which may be foreclosed or otherwise collected as provided herein.

**3.4 Lien.** The Association has a lien on each lot for unpaid past due Association assessments, and charges, together with interest, late payment penalties, costs and reasonable attorney fees incurred by the Association in enforcing this lien. The lien is perfected by recording a Claim of Lien in the public records of the county, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments, fines and charges, interests, late fees, costs and attorney fees which are due and which may accrue or come due after the

recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

**3.5     Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges by the procedures and in the same manner as is provided in Section 720.3085 of the Florida Statutes, as amended from time to time, for the foreclosure of a lien upon a lot for unpaid assessments. All unpaid assessments and charges also constitute a personal obligation of the owners and the Association may, in addition to any other remedy herein provided, bring an action at law against any owner liable for unpaid charges or assessments. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney fees in connection with any appeal of such action.

**3.6     Priority of Liens.** The Association's lien for unpaid charges, assessments and all other amounts shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but shall relate back to the date the original Declaration was recorded in the Public Record (to wit February 10, 1995) and be superior to, and take priority over, any other mortgage, lien or interest recorded after that date. Any lease of a lot shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

**3.7     Application of Payments; Failure to Pay; Interest.** Assessments, charges and installments thereon paid on or before fifteen (15) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. In addition to interest the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law. Assessments, charges and installments thereon shall become due, and the lot owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. Any restrictive endorsement on or accompanying a payment notwithstanding, all payments made to the Association by or on behalf of a Lot owner shall be applied first to interest, then, to late fees, then to costs (including but not limited to collection charges imposed by the management company, attorney and court) then to attorney fees, then to fines (if allowed by law), then to other charges, and then to the oldest outstanding unpaid regular, special or individual assessments. No payment by check is deemed received until the check has cleared. The Association shall also have the right to require any tenant occupying the Lot during any period in which assessments for the Lot are due but have not been paid to the Association to pay the rent to the Association as provided in Section 10.10 below

**3.8     Acceleration.** If any special assessment or installment of a regular assessment as to a lot becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the lot's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last

known address, and shall be deemed given upon mailing of the notice, postpaid.

**3.9 Certificate as to Assessment, Mortgagee Questionnaires.** Within fifteen (15) days after request by a lot owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter" stating whether all assessments and other monies owed to the Association by the lot owner with respect to the lot have been paid. Any person other than the lot owner who relies upon such certificate shall be protected thereby. The Association may charge up to \$150.00 to issue an estoppel certificate. The Association may but is not obligated to respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire the Association may charge up to \$150.00 (in addition to any charge for an estoppel letter) plus attorney's fees for doing so.

**3.10 Mortgage Foreclosure.** Unless otherwise provided by law, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer or title shall be liable for the share of common expenses or assessments attributable to the lot, or to the former owner of the lot, which came due prior to the mortgagee's acquisition of title as required by Section 720.3085, Florida Statutes. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all owners, including such acquirer and his successors and assigns. All other persons or entities acquiring title to a Lot as the result of a foreclosure or other Court ordered sale shall be obligated to pay all past due assessments due and owing at the time of sale regardless of whether or not the Association has filed a lien. No owner or acquirer of title to a lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of his ownership.

**3.11 Working Capital Fund.** A Working Capital Fund will be established for the Association, which shall be collected from each Lot purchaser at the time of conveyance of each Lot to such purchaser in an amount equal to three (3) months of the annual assessment (which shall include the Master Association Assessment) for each Lot. Each Lot's share of the Working Capital Fund shall be collected and transferred to the Association at the time of closing of the sale or resale of each Lot. The purpose of this fund is to assure that the Association's Board of Directors will have cash available to meet expenditures or to pay for expenses or acquire additional equipment deemed necessary or desirable by the Board of Directors. Amounts paid into the fund are not to be considered as advance payment of regular assessments. The Working Capital Fund may be used to pay any Association expenses. If a purchaser fails to pay the required amount the Association may record a lien against the Lot and proceed to foreclose the lien in the manner provided for herein for the foreclosure of an assessment lien. The obligation to pay the Working Capital Fund amount shall also be deemed the personal obligation of the lot owner.

#### **4. EASEMENTS.**

**4.1 Appurtenant Easements.** Subject to the restrictions found elsewhere in this Section 4, the

owner of each lot, their guests, lessees and invitees, shall have as an appurtenance to their lot a perpetual nonexclusive easement for ingress and egress over, across and through the Common Areas, for the use and enjoyment of all recreational facilities, such use and enjoyment to be shared in common with the other owners of lots, their guests, lessees and invitees, subject to the provisions of this Declaration.

**4.2 Utility Easements.** A perpetual easement shall exist upon, over, under and across all of Sail Harbour for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, valves, gates, pipelines, cable television and all machinery and apparatus appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing all owners of lots and servicing the Common Areas, all such easements to be of a size, width and location so as to minimize and not unreasonably interfere with the use of any improvements which are now, or will be, located upon said property. The Association, through its Board of Directors, has the authority to grant additional such easements, and to modify, move or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the lots common elements and Common Areas.

**4.3 Subordination.** Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate without the necessity of any other instrument, to any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the Common Areas.

**4.4 Extent of Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(A) the right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Areas and providing the services herein, and, to aid thereof, to mortgage said properties;

(B) the right of the Association to impose rules and regulations governing the use of the Common Areas and Association property as further provided in Section 7 of the Bylaws; and

(C) the right of the Association to a non-exclusive easement over, across and through each lot as necessary to meet the Association's maintenance responsibilities.

**4.5** Any owner of a lot in the properties which lot contains a structure which encroaches upon another lot or, the Common Areas shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists. This shall not apply to intentional encroachments.

**4.6** Notwithstanding anything to the contrary contained herein or elsewhere the Association,

through its Board of Directors, has the authority to grant additional easements, and to modify, move or vacate existing easements as it may deem to be necessary and desirable across, over or under lots and Common Areas.

## **5. MAINTENANCE.**

**5.1 Association Maintenance.** Commencing with the date the original Declaration was recorded, the Association shall be responsible for the maintenance of the Common Areas and any improvements or personal property in a continuous and satisfactory manner and for the payment of property taxes assessed against the Common Areas, if any, and any improvements and any personal property thereon accruing from and after the date these covenants are recorded. The Association shall at its expense at all times maintain in good repair, and shall replace as needed any and all improvements situated on the Common Areas, including, but limited to, all recreational facilities, landscaping, paving, drainage structures, street lighting fixtures, signs, irrigation systems, sidewalks, and other structures except for public utilities. All such work to be done as ordered by the Board of Directors of the Association acting on a majority vote of the Board members. All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through assessments imposed in accordance with this Declaration. Such assessments shall be against all Lots as set forth herein; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with the lawfully adopted Rules and Regulations of the Association shall be levied as a special or individual assessment against such Member. No Owner may waive or otherwise escape liability for the assessments for such maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas.

**5.2 Lot Maintenance by Association.** The Association will provide maintenance of all lawn areas of the Lots, including lawn cutting, lawn fertilization, weeding and irrigation maintenance and assess the Lot Owners for the expenses relating to such services as a common expense payable via regular assessments. The Association may also provide exterior building maintenance (roof repair/replacement and/or building painting) and assess the home owners through Regular, Individual or Special Assessments.

If the Association chooses to provide exterior building maintenance, the Board of Directors of the Association shall estimate the cost of any home exterior maintenance for each year and shall fix the assessments for each year with the Owners as is necessary to reflect the actual cost of such exterior maintenance. Exterior maintenance specifically requested by an Owner shall be assessed solely to such Owner as an Individual Assessment if the Association, at its option elects to perform such work. The cost of any exterior maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with the lawfully adopted Rules and Regulations of the Association shall be levied as a Individual Assessment against such Owner. In addition, an Owner may be specially assessed for any damage or injury caused by the negligent conduct of such Owner to any easement areas granted to provide access to perform the exterior maintenance. Nothing contained herein shall obligate the Association to make repairs or replacements of improvements to homes damaged by fire, windstorm, hail or other casualty; such repairs or replacements shall be made by the Owner of the Lot which suffers

damage unless the Association elects to maintain insurance covering these damages for the Lot Owners. The Association shall not be obligated to repair any mechanical equipment (e.g., air conditioning unit), which is part of any residence, nor shall it be responsible for any repairs which could be made pursuant to the terms of any warranty covering a residence. Party wall(s) are the walls placed between two adjoining units and each Owner will be responsible for repairs and replacement of their side of the party wall(s). The party wall(s) may not be moved or altered by any Owner.

**5.3 Lot Owner Maintenance.** The individual lot owners shall, in addition to other obligations contained elsewhere herein, have the maintenance, repair and replacement responsibility of the following unless the Association has exercised its right to perform such maintenance as provided above:

(A) The home, structure and all structural components, including the roof and all roof components. The roofs and exterior of the structure shall be cleaned on a regular basis to remove and discourage mold growth.

(B) Individual Owners are responsible for repair and replacement of their garage doors, residence doors, fencing, windows, screening, driveway, entrance walk, patio deck including screening, light fixtures, gutters, downspouts and other exterior items, however, the Association reserves the right to maintain such areas if, in its sole discretion, the Association deems it desirable.

(C) The complete interior of the home including all interior walls, floors, ceilings, partitions, cabinets, plumbing and all other interior components.

(D) Interior and exterior electrical lines and hookups, all air conditioning components, appliances, TV cables and connections, telephone and other similar lines and connections and sewer pipes and septic systems serving the individual lot.

(E) Any modifications, alteration, installation or addition to the lot or Common Areas made by the lot owner or his predecessors in title with Board approval including but not limited to, any decks or concrete pads. The lot owner shall be responsible for insurance, maintenance, repair and replacement of such modifications, installations or additions and the cost of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the properties for which the Association is responsible.

**5.4 Enforcement of Maintenance.** If the owner of a lot fails to maintain his lot as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the lot and remedying the violation, with or without consent of the lot owner but only after ten (10) days written notice of intent to do so. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, prevents the Association from

fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Properties. Any expenses so incurred by the Association shall be billed directly to the owner of the lot to which such services are provided, and shall be an individual assessment charged against the lot, secured by a lien against the lot as provided in Section 3 above.

**5.5 Negligence; Damage Caused by Condition in Lot.** Each lot owner shall be liable for the expenses of any maintenance, repair or replacement of Common Areas, other lots, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees.

**6. ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE COMMUNITY.**

**6.1 Improvements Requiring Approval.** No building, structure, enclosure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way alters the exterior appearance of any structure or lot shall occur unless and until the plans, specifications and location of same shall have been submitted to, and approved in writing by, the Architectural Review Board (hereinafter "ARB"). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography. The ARB shall have thirty (30) days after delivery of all required information, plans and materials to approve or deny any such plan, and if not denied within such period, said plans shall be deemed approved unless within the same period the Board of Directors denies the plan in which case regardless of any action or inaction by the ARB the plan shall be deemed denied. All approved modifications or improvements shall be completed within one hundred eighty (180) days from the date of approval. All changes, alterations or modifications to an approved plan must also be approved pursuant according to these same requirements.

**6.2 The ARB.** The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Board (the ARB), which shall consist of at least three (3) persons, who shall be members of the Association. All members of the ARB shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. The Board of Directors can appoint all or some of the Directors to the ARB. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors. The members of the ARB shall receive no compensation for services other than reimbursement for actual expenses approved in advance by the Board of Directors incurred by them in the performance of their duties hereunder. The ARB shall, with the prior approval of the Board of Directors, have the power to engage the services of professionals for compensation for purposes of aiding the ARB in carrying out its functions. Notwithstanding anything to the contrary contained herein or elsewhere all decisions of the ARB are subject to review by the Board of Directors and the Board of Directors has the authority to overrule,



void or otherwise modify in all respects any decision of the ARB.

**6.3 Powers and Duties.** The ARB shall have the following powers and duties:

(A) To recommend, from time to time, to the Board of Directors of the Association the creation or modification and/or amendments to the Architectural Planning Criteria. Any Architectural Planning Criteria or modifications or amendments thereto shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present. Notice of the adoption, modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such adoption, change or modification, shall be delivered to each member of the Association. However, receipt of notice of a Board meeting concerning the Architectural Planning Criteria or a copy of any adoption of or modification or amendment to the Architectural Planning Criteria shall not affect the validity of such change or modification.

(B) To require submission to the ARB of one (1) complete set of all plans and specifications for any improvement, structure of any kind or any other work which in any way alters the exterior appearance of any structure, or Lot including without limitation, any building, fence, well, swimming pool, tennis court, enclosure, sewer, drain, disposal system, decorative building or landscape devise, object or other improvement, the construction or placement of which is proposed upon the Properties. The ARB may also require submission of samples of building materials proposed for use on or as part of any home, and may require such additional information as may reasonably be necessary to completely evaluate the proposed structure or improvement in accordance with this Declaration and the Architectural Planning Criteria.

(C) To approve or disapprove any improvement or structure of any kind, including, without limitation, any building, fence, wall, screen enclosure, drain or disposal system, or other improvement or change or modification thereto, the construction, erection, performance or placement of which is proposed upon the Properties, and which is visible from the outside of any home. Evidence of approval by the ARB may be made by a certificate, in recordable form, executed by the Chairman of the ARB. Any party aggrieved by a decision of the ARB or Board of Directors shall have the right to make written request to the Board of Directors of the Association within thirty (30) days of the decision, for a re-review thereof. The determination of the Board upon re-reviewing any such decision shall in all events be dispositive.

(D) To adopt a procedure for inspecting approved changes during and after construction to insure conformity with approved plans. If it is determined by the ARB that the improvement or work is not in compliance with the approved plans and specifications then upon written demand from the ARB the work shall be suspended until such time as the ARB authorizes the work to be recommenced.

(E) Notwithstanding anything to the contrary contained herein if an owner is delinquent in the payment of assessments, fines or other charges or has failed to correct a violation of these covenants or the rules of the Association for which they have been given notice the approval of the ARB may be denied or withheld pending payment of the assessments, fines or other charges or correction of the violation.

**6.4 Variances.** The ARB may authorize variances from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental which must be signed by at least two (2) members of the ARB. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variances were granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority. The Board of Directors may overrule and void any variance granted by the ARB if such action is taken within twenty (20) days from the date the variance is granted.

**6.5 Nonliability of ARB Members.** Neither the ARB nor any member thereof, nor its duly authorized ARB representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the ARB's duties hereunder, unless due to the willful misconduct or bad faith of a member, and only that member shall be liable therefore. The ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, or addition solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and to the Development. The ARB shall take into consideration the aesthetic aspects of the architectural designs, placement or buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

## **7. MATTERS CONCERNING STORMWATER MANAGEMENT; USE OF LAKES**

**7.1 Stormwater Drainage.** Stormwater generated from the Property will drain, via Drainage Easements established on the Plat for Sail Harbour at HealthPark (the "Plat"), into Water Management Tracts ("WMTs") which are each owned by the Master Association. Each of the WMTs lie outside of the boundary of the Property. No WMT shall be designated "Common Areas", nor shall any WMT be or

become Association property, and no owner shall have the right to utilize any portion of any WMT. The Master Association shall be responsible for the maintenance, operation, repair, and restoration of all WMTs provided, however, the Association shall be responsible for maintenance of the littoral planting zones lying within the twenty foot (20') Lake Maintenance Easements which lie within the Plat. The Master Association shall be granted an easement on the Plat for ingress and egress over the interior roadway system and the Drainage Easements shown on the Plat for the purpose of maintaining the WMTs.

**7.2 Association Drainage Easements.** The Drainage Easements lying within the Plat shall be maintained, operated, repaired and restored by the Association at the Association's expense, including the inlets and piping extending into any WMT.

**7.3 Use.** The WMTs and Drainage Easements shown on the Plat are to be used for the purposes of stormwater containment and conveyance only, and are not aesthetic in nature. No owner shall have the right to use any WMT, Drainage Easement or any Lake Maintenance Easement area or the lakes contained therein for recreational purposes such as boating, fishing or swimming. Neither the Master Association nor the Association has any control over the water elevation levels in the WMTs.

**NEITHER THE ASSOCIATION NOR ANY OF ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, OR OTHER WATER BODY WITHIN OR ADJACENT TO THE PROPERTIES. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, AND ALL PERSONS USING SAME DO SO AT THEIR OWN RISK.**

**ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTIES LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.**

**ALL PERSONS ARE HEREBY ADVISED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY HABITUATE OR ENTER INTO WATER BODIES WITH OR NEARBY THE PROPERTIES AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY**

## **DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.**

**8. USE RESTRICTIONS.** The following rules and standards apply to Sail Harbour and shall be enforced by the Association pursuant to Section 13 hereof.

8.1 Home. Each home shall be occupied by only one family, its servants and guests, as a residence and for no other purpose. Each Home shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Home or any portion of the Community, except that the Owner or Occupant residing in a Home may conduct ancillary business activities within the dwelling so long as:

- (A) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling (including, but not limited to, signs identifying the business shall not be seen from outside the Home, the business use shall conform to all noise ordinances and all noise and nuisance requirements of this Declaration, if any);
- (B) the business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;
- (C) the business activity does not increase traffic in the Community in excess of what would normally be expected for residential dwellings in the Community without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (D) the business activity and all parties related to the business activity comply with all vehicle and parking requirements and prohibitions set forth in this Declaration;
- (E) the business activity is legal and conforms to all zoning requirements for the Community;
- (F) the business activity does not require the Association to obtain additional insurance coverage, increase the insurance premium paid by the Association, or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (G) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents in the Community, as determined in Board of Director's discretion; and

- (H) the business activity does not result in a materially greater use of Common Elements, facilities or Association services. The terms "business" and "trade," as used in this provision, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

The foregoing notwithstanding the use of a Home as a public lodging establishment or as part of a fractional ownership or vacation club program shall be deemed a business or commercial use that is prohibited.

By conducting ancillary business activity from a Home in the Community, the Owners and Occupants of such Home hereby covenant and agree to release and hold harmless the Association, its Directors, Officers, agents, representatives and/or vendors for any interruption or suspension of, or any damages to, such ancillary business activity caused by any action or inaction of such parties of any nature whatsoever. The Association shall have no liability or obligation to take any action or refrain from taking any action that will impact an Owner's or Occupant's business activity from a Home in the Community. Owners and Occupants conducting any ancillary business activity from a Home in the Community hereby covenant and agree to obtain whatever supplemental insurance may be necessary to protect their business assets, business continuity and business interests. The Association shall not be liable or obligated to obtain additional insurance coverage related to or because of the existence of such ancillary business activity.

**8.2 Minors; Operation of Motor Vehicles on Common Area.** All persons under eighteen (18) years of age shall be supervised by a responsible adult. Any person that does not have a valid, current driver's license is prohibited from operating any motor vehicle, including but not limited to golf carts, on the Common Area unless said person is accompanied by and under the direct supervision of another person that has a valid, current driver's license.

**8.3 Pets, Livestock and Poultry.** No animals, livestock, snakes or poultry of any kind shall be raised, bred or kept except that dogs, cats, or other, normal, domesticated, household pets may be kept, but no more than a total of two (2). Those pets which in the sole discretion of the Association, endanger the health, safety or welfare, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the Owner of any property located adjacent to the Properties may be expelled and removed from the Properties by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs, which are household pets, shall be confined to a leash whenever they are outside a Unit. **ADDITIONALLY, IT SHALL BE THE PET OWNERS OBLIGATION TO REMOVE THE PET'S WASTE MATERIAL FROM ALL PROPERTY WITHIN THE**

**DEVELOPMENT.** All pets shall be properly licensed and shall have all required medical vaccinations. Upon request a pet owner shall provide the Board proof of licensure and the medical history/records of the pet. The keeping of pets is a privilege not a right. Pets may only be kept subject to the following conditions:

- (A) No pets shall be permitted in the pool area, leashed or unleashed.
- (B) Owners may not leave pets unattended in screened porches, or lanais where their noise may bother others.
- (C) Any Owner tenant or guest who keeps or maintains any pet shall, in exchange for and in consideration of the privilege to keep the pet, hereby indemnify and hold the Association and other Owners and residents free and harmless from any loss, claim or liability of any kind or character of whatever nature arising from or related to the keeping or maintaining of such pet on the Property.

**8.4    Nuisances.** No owner shall use his home, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another home, or which would not be consistent with the maintenance of the highest standards for a first class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each home shall be consistent with existing laws and the governing documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community. The Board of Directors determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms.

**8.5    Signs.** No person may post or display a sign anywhere within Sail Harbour other than two (2) "For Sale", "For Rent", "Open House" or other similar sign when said sign is used for the purpose of actively marketing the home for sale. Any such sign may not be larger than four (4) square feet.

**8.6    Garages.** Each home shall have an attached garage capable of housing one (1) or two (2) standard sized automobiles. Carports are prohibited. No more than one (1) of vehicle shall be regularly parked in the driveway of a Lot with only a one car garage. No more than two (2) vehicles shall be regularly parked in the driveway of a Lot with a two car garage. No garage shall be enclosed or converted to other use without the approval of the ARB.

**8.7    Lot Structures.** Other than one single family home, and related garage, no structure, trailer, house trailer, tent, shack, shed, barn or other outbuilding shall be used or placed on any lot or the Common Areas at any time either temporarily or permanently without the approval of the ARB. Fee-simple attached units shall have a minimum air conditioned floor area of 1,200 square feet for two (2) bedroom units and 1,300 square feet for three (3) bedroom units, and a minimum one (1) car garage.

The garages may provide a credit towards the minimum air-conditioned floor area of 100 square feet. All roofs shall be covered by architectural grade shingles, metal or tiles. Any proposed roof replacement, in whole or in part, shall first be approved by the ARB.

**8.8 Setback Lines.** Buildings shall be located in conformance with the Zoning Code of Lee County, Florida and any specific zoning approvals thereunder or as originally constructed on a Lot by Declarant or its successor or assignee. However, whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so under the Zoning Code, said variance or special exception must also be approved in writing by the ARB and if not so approved shall not be allowed.

**8.9 Parking; Vehicles.** Owners and their guests shall park in the garages or driveways. Additionally, residents and their guests are permitted to park in designated Common Area parking spaces, if any, on a first-come basis. No vehicles shall be parked on the grass or in any other areas that are not designed for the parking of vehicles. A home Owner or lessee resident shall be allowed to park the number of average mid-size vehicles that are capable of being parked in the home's garage and driveway at any one time. All vehicles in excess of the maximum number are prohibited. The Board shall be authorized to make exceptions to the maximum number of vehicles to account for an Owner's or Lessee's guests and other temporary situations. The granting of an exception or variance by the Board shall not set a precedent applicable to any other situation whether similar or not nor shall it constitute a waiver. Commercial vehicles are prohibited from being parked on the Properties at all times except when temporarily present to perform necessary services. The term "commercial vehicle" as used herein shall mean any vehicle that contains signage, graphics or equipment of or intended for commercial purposes or a vehicle with or without signage, equipment or graphics that is primarily designed to be used for commercial purposes without regard to whether or not the vehicle is presently used for a commercial purpose. The Board may restrict and/or designate particular areas of the Property for parking for certain purposes or vehicles. The Board is authorized to adopt, implement, enforce and modify as it deems necessary a vehicle registration program for all vehicles entering or parking on the Property. Such authority includes but is not limited to requiring vehicles to be marked with a registration sticker, bar code or other similar item in a location on the vehicle determined by the Board; issuing access cards, codes or similar items/devices to owners and tenants; requiring vehicles to be registered and owners to submit vehicle registration and licensure information (including a copy of the vehicle owner's and/or operator's driver's license); and issuing parking passes for guests and other persons entering the Properties on a temporary basis. The Association may charge a reasonable fee for lost, replacement or extra vehicle access equipment and/or parking stickers/bar codes/access cards or such other similar required items. The Association is authorized to deny any person or vehicle access to the Properties that has failed to comply with the restrictions contained herein or elsewhere in the governing documents. The Board is authorized to have any vehicle that is parked in violation of these restrictions towed from the Properties or a disabling boot placed on it at the vehicle owner's expense.

**8.10 Landscaping.** All landscaping on Lots and Common Area is maintained by the Association as provided in Section 5.2 above. No person shall add, remove, plant, trim, cut or in anyway alter the

landscaping maintained by the Association.

#### **8.11 General.**

(A) No towels, garments, rugs, etc., may be hung from windows or other parts of the homes. No clotheslines or drying yards shall be allowed.

(B) No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the premises and no refuse pile or unsightly objects shall be allowed to be placed or remain anywhere thereon. Vacant lots shall be cleaned, seeded and then maintained in a well kept condition at all times. Landscaping on lake front lots shall be kept trimmed to at or below the level of the lake bank and all trees trimmed so that they do not unreasonably interfere or block the view of the lake from adjacent lots.

(C) No obnoxious or offensive activity shall be carried on within Sail Harbour or upon any part, portion or tract thereof, nor shall anything be done which may be or become a source of unreasonable nuisance or annoyance to the Community or its residents.

(D) Trash, garbage and other waste shall be kept only in sanitary containers which shall be kept in a clean and sanitary condition and kept in the garage and not on the interior roadways except when out for pick-up. Recycle bins and trash shall not be put on the curb, for pick-up, prior to 6:00 p.m., the night before the scheduled pick-up and shall be removed from the curb no later than 6:00 p.m., the day of pick-up.

(E) No antenna of any kind shall be placed or erected upon any lot or affixed in any manner to the exterior of any building other than a satellite antenna one meter or less in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multichannel, multi point distribution service which may be installed only at a location on a lot approved by the ARB. In approving the installation and location of any antenna the ARB shall comply with all applicable laws, whether state or Federal.

(G) No fences or walls shall be permitted on any portion of a Lot except for the fence maintained by the Association.

(H) No recreational facilities, structures or improvements shall be constructed or placed on a Lot or Common Area, including without limitation by specification, any play or recreation structures, such as swing sets, play houses, plastic play sets or any other kind of structures of a similar kind or nature (collectively referred to herein as "Recreation Facilities").

(I) Screen enclosures must be constructed with white aluminum frame and charcoal screen.

(J) No aluminum, insulated roofs are allowed with screen enclosures.



(K) All gutters must be white aluminum.

**8.12 Driveways.** All dwellings shall have a paved driveway of stable and permanent construction. The driveway shall be at least ten (10') feet in width. All driveways shall be made of concrete pavers unless otherwise approved by the ARB in advance and in writing.

**8.13 Air Conditioning Units.** No window or wall air conditioning units shall be permitted on any Lot. Compressors and fans for central air conditioning or heat pump systems which are located outside the exterior of a building shall be adequately screened to prevent their being viewed from any street.

**8.14 Mailboxes; Address Markers.** No mailboxes or receptacles for the delivery of newspapers, magazines or mail shall be allowed. Only address markers originally installed by the developer or like kind replacements thereof are allowed.

**8.15 Feeding of Ducks and Wild Animals Prohibited.** No person shall feed any ducks, geese or other water fowl or wild animals on the Property.

**8.16 Maximum Number of Occupants in Home.** The maximum number of permanent occupants of a home shall not exceed two (2) persons per the number of bedrooms in the home. A bedroom shall be defined as any room identified as a bedroom on the original plans for the home. The term "permanent occupant" shall mean any person that stays overnight in the home more than 60 days (either consecutively or cumulatively) in any 365 day period. The term "stays overnight" shall mean the act of being present in the home after 11:59 P.M. until 6:00 A.M. the following day.

## **9. INSURANCE.**

**9.1 Association Insurance.** The Association's Board of Directors or its duly authorized agent shall have the authority to obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its

Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit for bodily injury and property damage, a Two Million Dollar (\$2,000,000.00) limit per occurrence, if reasonably available.

Additionally, the Board shall obtain a Directors and Officers liability policy with at least a \$1,000,000 limit.

Cost of insurance coverage obtained by the Association for the Common Areas shall be a common expense. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties, as further identified in (B) below. Such insurance shall be governed by the provisions hereinafter set forth:

- (A) All policies shall be written with a company licensed to do business in Florida which holds an A.M. Best Company, Inc. rating of A or better, if reasonably available, or, if not available, the most nearly equivalent rating.
- (B) All policies on the Common Areas shall be for the benefit of the Owners and their Mortgagees as their interests may appear.
- (C) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from the participating in the settlement negotiations, if any, related thereto.
- (D) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.
- (E) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies will provide for the following:
  - 1. that no policy may be canceled, invalidated or suspended on account of the conduct of any one or more individual Owners;
  - 2. that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, Officer, or employee without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;
  - 3. that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

4. that no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

(F) The Association's Board of Directors may, in their discretion, obtain such other types of insurance for the Association, as they deem necessary.

In addition to the other insurance required by this section, the Board of Directors may obtain, as a common expense, worker's compensation insurance if the Association has any employees and a fidelity bond or bonds on Directors, officers, employees, and other persons handling or responsible for the Association's funds. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

**9.2 Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Lot Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry homeowner insurance on the Lot(s) and structures constructed thereon. The Association shall require each owner to provide evidence of a currently effective policy of hazard insurance upon request, but not more than once per year. Upon the failure of an owner to provide a certificate of insurance issued by an insurer approved to write such insurance in this state within 30 days after the date on which a written request is delivered, the Association may purchase a policy of insurance on behalf of an owner. The cost of such a policy shall be considered an individual assessment and may be collected in the manner provided for the collection of assessments in Section 720.3085, Florida Statutes. Each Lot Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction, and the Owner shall pay the costs of any repair or reconstruction which are not covered by insurance proceeds. In the event that the structure and all units therein are totally destroyed and all Owners decide not to rebuild or to reconstruct, then the Owners shall clear the Lots of all debris and return it to substantially the natural state (landscaped in a manner as determined by the Board of Directors) and the Owners shall continue to maintain the Lots in a neat and attractive condition and continue to be responsible for payment of Assessments. Each Lot Owner is encouraged to purchase and maintain insurance at their own expense, which covers theft, damage and loss to personal property

(A) Association Option to Obtain Insurance on Homes and Lots. Notwithstanding anything to the contrary contained herein or elsewhere, the Board of Directors may, at its sole and exclusive option and discretion, choose to obtain insurance coverage for the homes and lots and charge the cost thereof as a Common Expense. Any such policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

**9.3 Disbursement of Proceeds.** Proceeds from insurance policies of Association shall be disbursed as follows:

(A) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, of such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after disbursing such costs of repairs or reconstruction to the Common Areas; and after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear; shall be retained by and for the benefit of the Association.

(B) If it is determined, that the damage or destruction to the Common Areas for which the proceeds are paid shall not be repaired or reconstruction, such proceeds shall be retained by and for the benefit of the Association.

#### **9.4 Damage and Destruction.**

(A) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty. Any affected Owner shall cooperate and provide such documentation as may be required by the insurance company.

(B) Any damage or destruction to the Common Areas shall be required or reconstructed unless at least eighty (80%) percent of the total vote of the Association and the affected owners if the damage is to other than Common Areas shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Areas damage or destruction shall be repaired or reconstructed.

**9.5 Repair and Reconstruction.** If the damage or destruction to the Common Areas for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners on the same basis as provided for assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair

**10. LEASING OF HOMES.** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of homes by their owners shall be restricted as provided in this section. All

leases of homes must be in writing. A homeowner may lease only his entire home, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc. The following also applies to any new occupant of a unit that was not approved under the existing lease of the unit.

#### **10.1 Procedures.**

(A) Notice by the Owner. An owner intending to lease his home(including renewing an existing lease) shall give to the Board of Directors or its designee written notice of such intention at least 20 days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably require including but not limited to a credit report, and background check. The Board may require a personal interview with any lessee, proposed occupant and his or her spouse, if any, as a pre-condition to approval. The Board may also conduct background checks and credit check on all proposed occupants. The applicant must sign for having received copies of the rules and regulations of the Association.

(B) Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have 10 days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

(C) Disapproval. 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. Appropriate grounds for disapproval shall include, but not be limited to, the following:

1. the owner is delinquent in the payment of assessments, fines or other charges at the time the application is considered;
2. the owner has a history of leasing his home without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his home;
3. the real estate company or rental agent handling the leasing transaction on behalf of the owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;

4. the application on its face indicates that the person seeking approval or any of the proposed occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Association;
5. the prospective lessee or any of the proposed occupants have 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;
6. the prospective lessee has a history of conduct which evidences disregard for the rights and property of others.
7. the prospective lessee evidences a strong possibility of financial irresponsibility;
8. the lessee or any of the proposed occupants, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
9. the prospective lessee or any of the proposed occupants give false or incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.
10. the owner fails to give proper notice of his intention to lease his home to the Board of Directors.

**10.2 Intentionally Left Blank.**

**10.3 Intentionally Left Blank.**

**10.4 Occupancy During Lease Term.**

(A) When a home has been leased the home may be occupied only by the lessee and his or her family.

(B) Guests may only occupy leased homes when the lessee is in residence. The total number of house guests in a leased home is limited to two (2) persons. Such guests may stay for a period not to exceed ten (10) days, and the number of occasions for this type of guest occupancy shall be limited to once during the lease term.

**10.5 Occupancy in Absence of Lessee.** If a lessee absents himself from the home for any period of time during the lease term, his family authorized to occupy the home by Section 10.4 above who are

already in residence may continue to occupy the home and may have house guests subject to all the restrictions in Sections 10.4 above. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the home.

**10.6 Use of Common Area and Association Property.** To prevent overtaxing the facilities, an owner whose home is leased may not use the recreation or parking facilities during the lease term.

**10.7 Regulation by Association.** All of the provisions of the governing documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a home as a lessee or guest to the same extent as against the owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the governing documents, designating the Association as the owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

**10.8 Fees and Deposits for the Lease of Homes.** Whenever herein the Board's approval is required to allow the lease of a home, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. A separate fee may be charged for each person intending to occupy the home except only one fee may be charged for a husband and wife and minor children. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require a security deposit to protect against damage to the Common Area or association property.

**10.9 Unapproved Leases.** Any lease of a home not approved pursuant to this Section 10 shall be void and unenforceable unless subsequently approved by the Board.

**10.10 Collateral Assignment of Rents.** In the event an Owner is in default in the payment of assessments or other sums due and owing to the Association and the Owner's Lot is leased, the Association shall have the right and authority to collect the rent to be paid by the tenant to the Owner directly from the tenant. Upon demand by the Association the tenant shall pay said rent to the Association. In the event such tenant fails to remit said rent directly to the Association within ten (10) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the lease and evict the tenant. All sums received from the tenant shall be applied to the Owner's account for the leased Lot according to the priority established in Section 720.3085, Florida Statutes until the Owner's account is current.

**11. TRANSFER OF OWNERSHIP OF LOTS.** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all

residents, the transfer of ownership of a unit shall be subject to the following provisions: NOTE: Any person who was not approved as part of the conveyance to the present unit Owner must be approved in advance of taking occupancy as provided herein, and for good cause may be disapproved, regardless of whether or not said person shall be obtaining an ownership interest in the Unit.

#### **11.1 Forms of Ownership.**

(A) A lot may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

(B) Co-Ownership. Co-ownership of lots is permitted. If the co-owners are to be other than husband and wife, the Board shall condition its approval upon the designation by the proposed new owners of one (1) natural person as "primary occupant". The use of the lot by other persons shall be as if the primary occupant were the only actual owner. Any subsequent change in the primary occupant shall be treated as a transfer to ownership by sale or gift subject to the provisions of this Section 11. No more than one such change will be approved in any 12 month period. The intent of this provision is to allow flexibility in estate, financial or tax planning, and to prohibit circumstances in which the unit may be used as short-term transient accommodations for several individuals or families or in the manner of fractional ownership or a vacation club.

(C) Ownership by Corporations, Partnerships or Trusts. A lot may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and to prohibit circumstances in which the lot may be used as short-term transient accommodations for several individuals or families or in the manner of fractional ownership or vacation club. The approval of a trust, or corporation, partnership or other entity as a lot owner shall be conditioned upon designation by the owner of not more than one (1) natural person to be the "primary occupant". The use of the lot by other persons shall be as if the primary occupant were the only actual owner. Any subsequent change in the primary occupants shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 11. No more than one such change will be approved in any 12 month period.

(D) Designation of Primary Occupant. If any unit owner fails to designate a primary occupant when required to do so, the Board of Directors may make the initial designation for the owner, and shall notify the owner in writing of its action.

(E) Life Estate. A lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under Section 14.2 below. In that event, the life tenant shall be the only Association member from such lot, and occupancy of the lot shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life



tenant shall be liable for all assessments and charges against the lot. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 11.1(B), above.

## **11.2 Transfers.**

(A) Sale or Gift. No lot owner may transfer a lot or any ownership interest in a lot by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any lot owner acquires his title by devise or inheritance, his right to occupy or use the lot shall be subject to the approval of the Board of Directors under Section 11.3(A)(2) below. The approval shall not be denied to any devise or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the lot before being approved by the Board of Directors under the procedures outlined in Section 11.3 below.

(D) To facilitate transfers proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) unit owners, or to the President, Vice President or Treasurer, any of whom may be deemed a Vice President for purposes of executing a Certificate of Approval.

## **11.3 Procedures.**

(A) Notice to Association.

1. Sale or Gift. An owner intending to make a sale or gift of his lot or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.
2. Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument

evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the unit following the procedures in this Section or Section 10.

3. Demand. With the notice required in Subsection (A)(1) above, the owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the lot at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.
4. Failure to Give Notice. If no notice is given, the Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. If any owner fails to obtain the Association's approval prior to selling an interest in a lot, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

(B) Board Action. Within 20 days after receipt of the required notice and all information or interview requested, or not later than 60 days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval.

1. With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval:
  - (a) The person seeking approval has been convicted of a felony involving violence to persons or property, a felony involving possession or sale of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
  - (b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The application on its face gives the Board reasonable cause to believe that the applicant intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Association;

(d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;

(e) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in this community as a tenant, owner or occupant of a home;

(f) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process.

(g) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

2. Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 11.3(A)(3), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner the name of an approved purchaser (which may be the Association) who will purchase the lot at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the owner and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the purchaser and selling owner, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

3. If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

**11.4 Exception.** The provisions of Sections 11.2 and 11.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure, nor shall the Association's approval be required for the subsequent resale or lease of a home by such mortgagee of the lot so acquired, but shall apply to the acquisition of title by any other person without regard to how the title was acquired.

**11.5 Unapproved Transfers.** Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

**11.6 Fees and Deposits Related to the Sale of Lots.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a lot, the Association may charge the owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. A separate fee may be charged for each person who is obtaining an interest in the lot except if such persons are husband and wife.

## **12. AMENDMENTS; TERMINATION.**

**12.1 Duration.** The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns until 2030. On January 1, 2030, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least two-thirds (2/3rds) of all owners of lots and two-thirds (2/3rds) of all Institutional Mortgagees on lots affirmatively vote, in person or by proxy, at a duly held meeting of members of the Association in favor of terminating this Declaration.

It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, to be given at least ninety (90) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting

of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Lee County, Florida at least one (1) year prior to the effective date of termination, and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

**12.2 Amendments by Members.** Except as otherwise provided herein or by law, this Declaration may be amended at anytime by the affirmative vote of at least a two thirds (2/3rds) of the voting interests in the Association, present and voting in person or by proxy, at a duly called meeting of the members of the Association. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by the President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida.

### **13. ENFORCEMENT; GENERAL PROVISIONS.**

**13.1 Enforcement.** Enforcement of these covenant, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any lot to enforce any lien created by these covenants. Failure of the Association or any owner to enforce any covenants, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

**13.2 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated his right of use in and to the Common Areas, as well as to any other person occupying any home under lease from the owner or by permission or invitation of the owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of any owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each lot owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests and by the guests, licensees and invitees of his tenants, at any time.

**13.3 Litigation.** Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought by any owner, or the Association against:

(A) the Association;

(B) the lot owner;

(C) anyone who occupies or is a tenant or guest of a lot; or

(D) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

**13.4 Attorney Fees.** In any legal proceeding arising out of an alleged failure of a guest, tenant, residential lot owner, officer, Director or the Association to comply with the requirements of the law, or the governing documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees as may be awarded by the court.

**13.5 No Election of Remedies.** All rights, remedies and privileges granted to the Association or owners under the law and the governing documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

**13.6 Notices.** Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed to the last known address of the owner appearing in the records of the Association, or to the address of the member's home. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address.

**13.7 Severability.** Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Amended and Restated Deed of Restrictions is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void but have no affect on the remaining provisions herein.

**13.8 Interpretation; Disputes.** The Board of Directors is responsible for interpreting the provisions of this Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this

Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

**13.9 Non-Profit Status.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

**13.10 Use of Singular and Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**13.11 Headings.** The headings used in the governing documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

**14. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:**

**14.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;**

**14.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.**

**14.3 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR**

**WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**14.4 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECT WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.**

**14.5 AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.**

#### **EXHIBITS**

Exhibit A - Amended and Restated Articles of Incorporation.

Exhibit B – Amended and Restated Bylaws.

Exhibit C – Rules and Regulations.