Prepared by and return to:
Leland Wilson, Esq
Association Legal Services
12600 World Plaza Ln.
Building 63
Ft. Myers, FL 33907
(239) 298-1238 (Telephone)
(941) 237-5687 (Facsimile)

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

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE HARCORAGE OWNERS' ASSOCIATION

KNOW ALL INDIVIDUALS BY THESE PRESENTS, that the undersigned, The Harborage Owners' Association, Inc., a Florida corporation, is the owner of certain property (hereinafter, the "Association"), located in Lee County, Florida as previously recorded, including but not limited to the Declaration of Covenants and Restrictions as originally recorded at O.R. Book 1852, Page 814 *et seq.*, and as Revitalized as recorded at Instrument No. 2017000227353 of the Public Records of Lee County, Florida.

The Association makes the following Declaration of Protective Covenants, Conditions and Restrictions covering above, specifying that this Declaration shall constitute a covenant running with the described land and that this Declaration shall be binding upon the undersigned and upon all persons deriving title through the undersigned. These protective covenants, during their lifetime, shall be for the benefit of and a limitation upon all present and future Owners of the real property.

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. **"Architectural Review Committee" ("ARC")** means the committee formed to promulgate design and development guidelines and application and review procedures for new construction and any modifications to improvements within the Association, and to review and approve the plans for the same.

1.2. **"Articles" or "Articles of Incorporation"** as used herein, means the Articles of Incorporation of the Association as amended from time to time.

1.3. **"Assessment"** means the proportionate share of the funds required for the payment of Common Expenses that is assessed against an Owner from time to time.

1.4. **"Association"** means The Harborage Owners' Association, Inc., a Florida corporation not-for-profit.

1.5. **"Association Property" or "Property"** means any real property owned by the Association, including any Improvements located thereon, and all personal property owned by the Association.

1.6. **"Board of Directors" or "Board" or "Directors"** means the Board of Directors responsible for the administration of the Association.

1.7. **"Bylaws"** as used herein, means the Bylaws of the Association, as amended from time to time.

1.8. **"Chapter 720"** means Chapter 720, Florida Statute as it now exists or as it may be amended from time to time including the definitions therein contained.

1.9. **"Charge"** means any legal or equitable indebtedness to the Association incurred by, or on behalf of, an Owner, other than Assessments for Common Expenses. Said obligation may arise by oral or written contract, by law or equity, or may be created by the Association's documents. Charges may include attorney fees. Said Charges may be secured by a lien against the Lot as provided herein.

1.10. **"Common Areas" or "Common Facilities"** means the portions of the Property not included in the Residential Units and shared among Owners and Members as depicted in the Plats..

1.11. **"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 Properties and items required to be maintained by the Association, other expenses declared by the Board or the Governing Documents to be Common Expenses, and any other valid expenses or debts of the Association which are assessed against the Owners.

1.12. **"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.

1.13. **"Declaration"** means this Declaration, as amended from time to time.

1.14. **"Family" or "Single Family"** means any one (1) of the following:

One (1) natural Person, his or her spouse, if any, and his, her or their parents, grandparents, grandchildren, siblings, or children (related by blood, marriage, or adoption), who do and plan to reside together indefinitely and continuously as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family.

Not more than two (2) natural Persons not meeting the requirement above, who do and plan to reside together indefinitely and continuously as a single financially and socially interdependent housekeeping unit, with the intention of living within the bonds of family and their respective parents, grandparents, grandchildren, siblings, or children (related by blood, marriage, or adoption).

The reference to "natural" is intended to distinguish between an individual and a corporation, partnership, limited liability partnership, limited liability company, trust, estate, or other artificial entity. A "Family Member" is a natural Person who resides in a Residential Unit as part of the Owner's Family or as part of the Family of a Tenant or a Guest, but, in each case, is not a title holder.

1.15. **"Governing Documents"** means and includes this Declaration, Articles of Incorporation,

Bylaws, and Rules and Regulations of the Association and all recorded exhibits to them, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any two of these documents, the first document to appear in the foregoing list shall prevail.

1.16. **"Guest"** means any person who is physically present in or Occupies a Property on a temporary basis (one hundred and eighty days (180) days or less during any twelve (12) month period) at the invitation of the Owner or legally permitted Occupant, without the payment of consideration. Any person who is not a Family member, as defined above, and who resides at the Property for more than one hundred and eighty days (180) days will be deemed an unapproved Occupant and is subject to the Leasing provisions of this Declaration and the Association's Rules. Said Occupant(s) will be subject to eviction at the Owner's expense should they fail to comply with the same. The Association may restrict or prohibit Guest visitation by convicted felons, including but not limited to, registered sex offenders and person who have been convicted of drug offenses.

1.17. **"Hurricane Protection"** means hurricane shutters, impact glass, code-compliant windows or doors, and other code compliant hurricane protection products used to preserve and protect the Association Property.

1.18. **"Improvements"** means all Structures and artificial changes to the natural environment (exclusive of landscaping) located on the Association Property.

1.19. **"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.

1.20. **"Invitee" or "Licensee"** means a Person expressly or impliedly allowed entry onto the Association Property for the purpose of conducting business with or providing services to a Lot or Occupant, or otherwise entering the Property on a temporary basis at the expressed or implied consent of the Owner or Occupant, including, but not limited to, contractors, workmen, delivery persons, domestic assistants, and health care assistants. A Guest and a Licensee are each an Invitee.

1.21. **"Lease" or "Leasing" or "Rent"** means the grant by a residential Owner of a temporary right of use of the Owners Residential Unit for valuable consideration. Leasing shall be construed to include any licensing or other arrangement with a third party where persons other than the Owner are permitted to Occupy the Residential Unit for the payment of consideration to any party. Any person who qualifies as a Tenant shall be deemed to be Leasing a Residential Unit.

1.22. **"Lien for Charges"** means a lien which is recorded to secure a Charge.

1.23. **"Lot"** means one or more of the numbered parcels of land graphically depicted on the plats as previously recorded into which the Property has been subdivided, upon each of which a Residential Unit has been or is intended to be constructed. Whenever the term "Lot" is used in the Governing Documents, it shall be deemed to be followed by the words "and Residential Unit constructed thereon", except where the context clearly requires otherwise. In previous Declarations, a Lot was referred to as a Building Site.

1.24. **"Maintenance" or "Maintain"** means, unless the context of a provision in the Governing Documents requires otherwise, landscaping, day-to-day cleaning, heavy cleaning, painting where applicable, routine maintenance, ongoing maintenance, preventative maintenance, as well as repair or replacement. The term "Maintenance" does not include repair after casualty, unless the context of a provision in the Governing Documents requires otherwise. Whenever an Owner is obligated by the Governing Documents or law to maintain, repair, or replace portions of the Association Property, the Board has the authority to establish reasonable standards for such maintenance, repair, or replacement, including mandating maintenance, repair, or replacement of said items, when the Board deems same are reasonably necessary, and the Board may likewise adopt specifications for replacement components, without need for Owner approval, notwithstanding any provision in this Declaration to the contrary.

1.25. **"Member"** means and refers to those persons who are entitled to membership in the Association as provided in its Articles of Incorporation and Bylaws. An Owner shall automatically become a Member of the Association, by virtue of acceptance of the deed or conveyance to his Lot. As a Member of such Association, said Owner shall be governed by the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, and Common Facilities Agreements.

1.26. **"Occupy" or "Occupying"** when used in connection with a Residential Unit, means the act of staying overnight in a Residential Unit. **"Occupant"** is a person who Occupies a Residential Unit.

1.27. **"Officer"** means the executive Officers and Assistant Officers (if any) appointed by the Board as provided in the Bylaws.

1.28. **"Owner" or "Lot Owner"** means the record owner of legal title to a Parcel. Wherever a portion of the Governing Documents, including the Rules and Regulations, proscribes, restricts, prohibits, governs or requires that an Owner take or refrain from taking any action, or engage or refrain from engaging in any conduct, or providing for liability to the Association arising from such acts or conduct or the failure to take required action or engage in required conduct, the term "Owner" is deemed to include, unless the context specifically suggests otherwise, the Owner's Family, Tenants, Residents, Guests, Invitees, and as may be applicable, the Family Members of such persons, as well as employees or agents of such persons.

1.29. **"Plats"** means all legal descriptions, site plans, surveys, and graphic depictions of record describing the Association Property. All Plats of record are incorporated by reference whether or not attached or separately described. The Plats may not reflect the actual configuration of the Association Property, as deviations from original as-built conditions may have been made over time.

1.30. **"Powered Watercraft",** in the Governing Documents, shall mean any watercraft that is moved by any type of engine or motor. This may include, but is not limited to, boats, power boats, jet skis, and powered gheenoes.

1.31. **"Resident"** means any natural Person who is Occupying a Residential Unit for one hundred and eighty (180) days or more, whether or not consecutive, in any calendar year and includes, as applicable, Owners, Tenants, Guests, and their respective Family members who reside in the Residential Unit for such period.

1.32. **"Residential Unit"** means and refers to the improvements on the Lot compromising the residence, home, or villa and the amenities appurtenant thereto. Whenever the term is used, it shall be interpreted as though it were followed by the words "and the Lot on which it is constructed," unless the context clearly requires another meaning.

1.33. **"Rules and Regulations"** means the rules, regulations, and policies governing the personal conduct of Owners and Occupants and the use, Occupancy, alteration, Maintenance, transfer and appearance of the Residential Units, community, Association Property, and Common Areas, that may be promulgated by the Board from time to time by resolution.

1.34. **"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, walls, flagpoles, antennas, and playground equipment.

1.35. **"Surface Water Management System"** means a collection of devices, Improvements or natural systems whereby surface waters are controlled, impounded, or obstructed as required or described in any permits issued by the South Florida Water Management District and any other applicable governmental agency for the Association Property. The term includes lakes, ditches, swales, dams, impoundments, reservoirs, drainage maintenance easements and those works defined by statute in Section 373.403(1)-(5), Florida Statutes.

1.36. **"Tenant" or "Licensee" or "Lessee"** means a natural Person Occupying a Residential Unit, other than the Owner, whether pursuant to a verbal or written agreement, where said Occupancy by such Person involves the payment or existence of consideration, including, but not limited to, the payment of money, the exchange of goods or services, or the provision of direct economic or indirect economic benefit, including tax benefits and the furtherance of business interests, including, but not limited to, use of a Residential Unit as an employee, supplier, or customer rewards or incentive, or a charity auction or similar prize.

1.37. **"Voting Interests"** means the voting rights distributed to the Association Members pursuant to the Bylaws.

2. MEMBERSHIP; VOTING

2.1. **Membership.** Every Owner of a Lot for which Assessments are charged 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.** Each Lot for which Assessments are charged shall be entitled to one vote to be cast by its Owner in accordance with the provisions of the Bylaws.

3. EASEMENTS.

3.1. **Appurtenant Easements.** Subject to the restrictions found elsewhere in this Section, 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, their Guests, Lessees, and Invitees, subject to the provisions of this Declaration.

3.2. **Association's Access Easement.** The Association's duly authorized representatives or agents shall, at all reasonable times, have and possess a reasonable right of entry and inspection upon the Property for the purpose of fully and faithfully discharging the duties of the Association. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot.

3.3. **Utility Easements.** All Utility or Drainage Easements shall be as depicted in the Plats, or as otherwise noted. A perpetual easement shall exist upon, over, under and across the Properties for the purpose of Maintaining, installing, repairing, altering and operating sewers, storm sewers, water mains, gas mains, electric cables, telephone cables, television cables, internet cables, and other utilities and apparatus appurtenant thereto as may be necessary for the installation and Maintenance of utilities servicing all Owners of 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 initial utility easements are either graphically depicted on the Plat, as amended, or described herein. 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 provide utility and other services efficiently and effectively to the Lots, Common Areas, and items to be Maintained by the Association. No sewage disposal system shall be used in the property except as approved by the Association.

3.4. **Drainage.** A perpetual, non-exclusive easement shall exist in favor of the Association and their employees or other designees for the use of drainage areas, drainage swales and storm sewers established throughout the Association, and an easement for ingress, egress, and access to enter any portion of the Properties in order to construct, Maintain or repair, as

necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Property by utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. The initial drainage easements are either graphically depicted on the Plat, as amended, or described herein. No Structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or Maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

3.5. **Road Rights of Way.** Road rights of way are rights of way within which roads, sidewalks, curbs, gutters, sewers, storm sewers, water mains, gas mains, electric cables, telephone cables and other utilities may be constructed, Maintained and used. The road rights of way may be used for any Association approved purpose. The initial road rights of way were graphically depicted on the original Plat, and as amended from time to time.

3.6. **Private Drive Easement.** The private drive easement is the easement shown on the Plat which will serve as access to the road rights of way for those Lots which would otherwise have inadequate access. The private drive easement shall also serve as a utility easement.

3.7. **Ingress and Egress.** Non-exclusive easements shall exist for pedestrian and vehicular traffic over, through, and across sidewalks, paths, walks, roads, driveways, stairways, streets and other portions of the Common Areas as may be from time to time intended and designated for such purposes and uses and such easements shall be for the use and benefit of the Owners within this Association, including their Guests, Licensees or Invitees; provided, however, nothing herein shall be construed to give or create in any person the right to park any vehicle upon any portion of the Association Property except an area specifically designated and assigned for such purposes.

3.8. **Additional Easements**. The Board has the authority, without the joinder of any Residential Unit Owner, to grant, modify, vacate, or move any easement if the easement constitutes part of or crosses the Common Areas or Association Property.

3.9. **Encroachments.** If for any reason other than the intentional act of the Owner or the Association, any Residential Unit encroaches upon any of the Common Areas, or upon any Lot, or any Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

3.10. **Tract E.** Notwithstanding anything appearing on the Plat to the contrary, each Owner of a Lot adjacent to Tract E, as shown on the Plat, Plat Book 38 Page 8 and 9 of Lee County, shall have an exclusive right to use the upland portion of Tract E which lies between a westerly extension of each of the side boundary lines of the Lot. Such use shall be as if the adjacent portion of Tract E were an integral part of the Lot.

3.11. **Extent of Easements.** Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

3.11.1. The right of the Association to establish, modify, amend, and rescind reasonable Rules and Regulations regarding use of the Common Area;

3.11.2. The right of the Association to dedicate or transfer all or any part of the Common Area to public agency, authority, or utility as provided by its Articles;

3.11.3. The right of the Association to open the Common Area for use by non-Members of the Association;

3.11.4. The right of the Association to approve Guests before they can use the facilities.

4. BUILDINGS, MAINTENANCE, AND ALTERATIONS.

4.1. **Buildings.** No building may be erected, altered, placed or permitted to remain on a Lot other than one detached single family residential structure. Such restrictions for size, setback requirements, and height shall be as recorded in the Original and Revitalized Declarations (the "previous Declarations") and any such building of a residence or any other Structure must be approved by the ARC, and must follow the Guidelines set out by the ARC.

4.2. **Variances.** The Association has the right to grant variances with respect to set back and building restrictions for all Lots within the Subdivision for the purpose of accommodating the highest and best use of a Lot which is consistent with the particular geometry of the Lot and is consistent with the objectives of this Declaration.

4.3. **Association Maintenance.** The Association is responsible for the protection, Maintenance, repair, and replacement of all Common Areas and Association Property. The cost is a Common Expense. The Association's responsibilities also include the following:

4.3.1. **Landscaping.** The Association shall have the responsibility to maintain the landscaping and property within any Lot owned by an Owner whose maintenance is the Owner's responsibility if the Owner fails to maintain the appearance of same using a standard of uniformity.

4.3.2. **Common Areas.** Except as otherwise provided herein, the Association shall Maintain, repair, and replace any all Improvements constructed on the Common Areas, including without limitations all landscaping, the components of the irrigation systems, including but not limited to the tap into the main line, timers, switching devices and heads, drainage structures, utility lines, sidewalks, light fixtures, roads, community pool, tennis gazebo (clubhouse), a tennis court, a pickleball court, a basketball half court, a tot lot playground, boatyard storage area and boat ramp, main entrance gate and gate personnel box, and other Association Structures. Additionally, where the Common Areas are contiguous to the right-of-way of a road, the Association shall Maintain all landscaping (if any) between the Common Areas and the pavement within such right-of-way. The Association may elect to provide a gate and gate personnel at the entrance to the Subdivision. In that event, access in the Subdivision shall be pursuant to rules established by the Association.

4.3.3. **Roadways.** The Maintenance for the roadway shall be the responsibility of the Association and it shall be empowered to levy necessary Assessments, which Assessments shall be secured by a lien upon each and every individual Unit and Lot.

Additionally, the roadway within the Harborage development is a private roadway which shall be maintained for the benefit of the Owner, their Guests and Invitees, by the Association.

4.3.4. **Street Lighting.** Streetlights in the Subdivision are provided pursuant to an agreement between Florida Power and Light Company (FP&L) and the Association. The agreement requires the Association to maintain a letter of credit in favor of FP&L in the amount of Twenty-Two Thousand Six Hundred Sixty-five Dollars ($22,665.00) to secure the continued performance of the Association pursuant to the agreement. The stipulated amount shall decrease by ten percent (10%) per year. The letter of credit shall not be payable except in the event of the Association's default under the terms of the agreement with FP&L. The Directors of the Association shall provide for the cost of the letter(s) of credit in the budget for the Association. In the event that any issuer of a letter of credit given with respect to the Association is obligated to pay the letter, then the issuer shall have the right to compel the Association to access each Lot for a pro rata part of the amount paid pursuant to the letter of credit, pay reasonable costs and attorneys' fees incurred in compelling the Association to make the assessment. Any assessment so levied shall be a special assessment and the Association shall cause a notice of the special assessment to be filed in the Public Records of Lee County, Florida. After recording the notice, the special assessment shall be a lien on each Lot, payable within ninety (90) days of the date of assessment and foreclosable in the same manner as a regular assessment. The special assessment shall provide for releases of Lots upon payment of the pro rata portion of the total special assessment. The Association shall provide, upon request, to any issuer of a letter of credit given pursuant to this paragraph, an estoppel letter reciting whether this paragraph shall be in effect at a given time. Owners in the Subdivision shall be bound by the Association's estoppel letter. Any issuer of a letter of credit given and paid pursuant to this paragraph shall have the right to compel the Association to foreclose any special assessments, which are not timely paid.

Commented [1]: NOT TO CLIENT: From Attorney Wilson: The amount available for a claim goes down by 10% per year, so it should only have existed for 10 years and should be irrelevant now. Verify that and you can probably remove this section.

4.3.5. **Unimproved Lots.** The Association shall regularly mow and keep clean unimproved Lots that do not comply with Section 4.5.1. herein, and only after providing fifteen (15) days written notice. Any expenses so incurred by the Association shall be billed directly to the Owner of the Lot and shall be an individual Assessment charged against the Lot. Each Owner of a Lot without either a completed home or a home under construction shall be deemed to have granted the Association the right to go upon the Lot for the purposes of this section.

4.4. **Alterations, Improvements, Additions to Common Areas.** The protection, Maintenance, repair, and replacement of the Common Areas and Association Property is the responsibility of the Association and the cost is a Common Expense. If there are sufficient Reserves for the specific purpose and there will be no Special Assessment needed and no increase in Annual Assessments attributable to the upgrade, then the Board shall be permitted to undertake repairs or replacements of Common Elements by a two-thirds (2/3rds) Board-only vote. If a Special Assessment is needed and/or the Annual Assessment is increased to compensate for this use of funds, then approval of at least two-thirds (2/3) of the Voting Interests who are present and voting, in person or by proxy, at an Annual or Special Meeting called for the purpose must be obtained.

Commented [2]: NOTE TO CLIENT: A reminder that 2/3rds of VI at the meeting (or by proxy) if base quorum is achieved is only 46 Owners needed to approve. It is not 2/3rds of all VI.

Commented [LD3]: NOTE TO CLIENT: Updated by Attorney Wilson to address your concerns.

4.5. **Lot Owner Maintenance.** All Maintenance, repairs, and replacements of, in or to any Residential Unit and Lot, whether structural or nonstructural, ordinary or extraordinary, including, without limitation, Improvements, Residential Units, docks, seawalls, and

landscaping shall be performed by the Owner of such Lot at the Owners' sole cost and expense, except as otherwise expressly provided to the contrary herein.

4.5.1. **Landscaping.** Within thirty (30) days following the completion of any building, parking lot or other improvement on any Lot, the yard areas will be sodded with a type of sod approved by the ARC, and the buildings, parking areas and other improvements will be substantially landscaped by the Owner in an aesthetically pleasing manner. Landscaping shall include the acquiring, planting, and maintenance of not less than three trees having at least a 6" trunk diameter measured 2 feet above the ground and shall be of approved type and specifications. Two (2) of the required trees shall be placed in front of the home and a third tree placed between the home and the rear Lot line. A list of approved trees and other specifications shall be provided by the Association. Owners shall select trees from an ARC approved list, which must be planted in addition to other vegetation desired by the Owner. If the required trees are not planted within the time required, the Association shall select and plant trees on the Owner's Lot and the Owner shall be deemed to have granted the Association an easement for the purpose of planting and maintaining the required trees. All landscaping and yard areas will be irrigated, fertilized, mowed, trimmed, edged, and cared for regularly. Ground cover such as mulch, rock or other material must have a continuity of color and be cared for regularly. No mixing of ground cover is allowed without ARC approval. Notwithstanding anything to the contrary elsewhere in this Declaration, Owners shall maintain the grassy area between the Lot and the roadway in front of the Lot. Diseased and dead plants and grass shall be replaced, and landscaping shall be otherwise maintained at all times in an aesthetically pleasing manner by the Owner. Grass height shall not exceed six (6) inches tall, nor contain large patches of weeds. In the event that the Owner fails to maintain landscaping, the Association shall have the right, after fifteen (15) days notice to the Owner, to undertake the Maintenance at the Owner's expense. No artificial trees, shrubs, grass or other vegetation will be placed or maintained on any Lot without the advance written approval of the ARC.

The landscaping of a leased Lot shall have a contracted landscape company to Maintain the property and must be approved by the Board.

4.5.2. Owners must maintain the exterior of the home and driveway to include:

4.5.2.1. A well-kept condition of exterior paint, windows, driveway, doors, garage doors, pool cages and screens, roof tiles, siding, privacy fencing/shrouding for trash cans, AC units, or pool equipment, or any other external feature. This shall also include the removal of mildew on any exteriors.

4.5.2.2. The external storage along the exterior of the Residential Unit of any construction material, lawn equipment, or trash, recycle or yard waste cans that can be viewed from the street or an adjacent property is prohibited unless correctly sight screened and as approved by the ARC.

4.5.3. The Unit Owner shall be responsible for the Maintenance, repair and replacement of any hurricane shutters, and other hurricane protection, if installed.

4.5.4. Lots shall be kept in a neat and well-maintained condition at all times, free from debris and rubbish.

4.6. **Owner Alterations and Improvements; Architectural Control.** No Residential Unit, 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 Residential Unit shall occur unless and until the plans, specifications, and location of same shall have been submitted to, and approved in writing by, the ARC. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding Structures and topography. The ARC 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. All changes, alterations, or modifications to an approved plan must also be approved pursuant to these same requirements. If any Association action is deemed necessary to enforce an architectural violation, the Association shall be entitled to collect reasonable attorney fees, costs, and other expenses against the Owner, whether or not litigation is instituted, and the Board may assess such amounts in the form of a Special Assessment for noncompliance. All Owners shall strictly follow the "Architectural Review Guidelines For Single Family Homes In The Harborage" Guidelines as they are amended from time to time.

4.7. **Existing Additions, Alterations, or Improvements by Owners.** Owners are financially responsible for any modifications, alteration, installation, or addition to the Lot made by the Owner or his predecessors in title. The 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 due to violations of the Guidelines or Rules set forth by the ARC and/or the Board.

4.8. **Enforcement of Maintenance.** If the Owner of a Lot fails to Maintain their 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 fining, or entering the Lot and remedying the violation, with or without consent of the Owner but only after fifteen (15) 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, together with reasonable attorney fees and other expenses of collection and shall be an individual Assessment charged against the Lot, secured by a lien against the Lot as provided herein.

4.9. **Negligence.** The Owner of each Lot shall be liable for the expenses of any Maintenance, repair or replacement of Common Elements, their own Lot, other Lots, or personal property made necessary by their act or negligence or by that of any member of their Family or their Guests, Tenants, or Invitees.

5. ASSOCIATION POWERS AND MANAGEMENT.

5.1. **Powers and Duties.** The powers and duties of the Association include those set forth in Chapters 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 Association. The Association has the

Commented [4]: NOTE TO CLIENT: Due to the new housebill, Associations must quote the clause in their Declaration for the reason of disapproval of a plan. I have added in Section 14 for Architectural Control stating that the homes must be unique like stated in 1.9 and 23.6, of the Guidelines, as the Guidelines may not be enough to allow the disapproval. Better to be safe here.

Commented [5]: NOTE TO CLIENT: I can see in your ARB Guidelines the ARB Members meet twice a week, but only review the first 5 applications. This is fine. We also recommend a timeframe like herein.

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.

5.2. **Bylaws.** A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration.

5.3. **Assessments and Charges**. The power to make and collect regular Assessments, special Assessments, and other Charges against Lot Owners.

5.4. **Regulations.** The power to adopt and amend Rules and Regulations covering the details of the operations and use of the Association Property.

5.5. **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 items to be Maintained by the Association with funds made available by the Association for such purposes.

5.6. **Acts of the Association.** Unless the approval or affirmative vote of the 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, without a vote of the Owners. The Officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Association by reason of being an Owner.

5.7. **Purchase of Lots.** The Association has the power to purchase Lots within the Association in connection with the foreclosure of an Association lien for Assessments, lien for Charges, 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 without prior approval of the Members.

5.8. **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. Except as otherwise provided herein, the power to acquire, encumber or convey ownership interests in real property shall be exercised by the Board only after approval by at least a majority of the Voting Interests of the Association.

5.9. **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, without need for authorization by the Owners.

5.10. **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 of the Declaration of Covenants, Conditions and Restrictions, the Bylaws, and

Rules and Regulations at the reasonable expense of the Member seeking copies.

The Association is permitted to meet the requirements above by posting a complete copy of the Association's rules and covenants, or a direct link thereto, on the homepage of the Association's website, if the website is accessible to the Members of the Association, and the Association sends notice to each Member of the Association of its intent to utilize the website for this purpose.

The Association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel Owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel Owner's right to inspect records to less than one 8-hour business day per month. As amended from time to time, the Association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The Association may charge up to 25 cents per page for copies made on the Association's photocopier. If the Association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the Association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The Association shall maintain an adequate number of copies of the recorded Governing Documents, to ensure their availability to Members and prospective members. This clause may be altered as amended from time to time

The personnel records of Association and management company employees are exempt from this requirement to be available to the Owners and are protected from disclosure. This protection shall include, but not be limited to, disciplinary, payroll, health and insurance records, but does not include written employment agreements or budgetary and financial records that indicate the compensation paid to an employee.

5.11. **Roster.** The Association shall maintain a current roster of names and designated mailing addresses of Owners, based upon information supplied by the Owners, as well as Parcel identification numbers. A Member's designated mailing address is the Member's property address, unless the Member has sent written notice to the Association requesting that a different mailing address be used for all required notices. 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. Additionally, the Association may maintain the electronic or facsimile mailing addresses designated by Members for receiving notice by electronic transmission of those Members consenting in writing to receive notices and documents by electronic transmission. The electronic mailing addresses, facsimile, and telephone numbers provided by Members to receive notices and documents by electronic transmission shall be removed from Association records and not made available to other Members when consent to receive notice by electronic transmission is revoked in writing and sent to the Association. The Association, however, is not liable for an erroneous disclosure of the electronic mailing

address or the number for receiving electronic transmission of notices.

6. ASSESSMENTS AND CHARGES. Each Owner (by virtue of his acceptance of title to their Lot) and each other person having an interest in or lien upon, or making any use of, any portion of the Association Property (by virtue of accepting such interest or lien or making such uses) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed in this provision including regular Assessments and special Assessments. The Association may also levy special Charges against any individual Lot for any amounts other than Common Expenses which are properly chargeable against such Lot under this Declaration or the Bylaws. Assessments shall be levied, and payment enforced as provided in the Bylaws and as follows:

6.1. Determination of Assessments. Assessments by the Association against each Owner of a Lot, and against each Lot, shall be based upon the annual budget, adopted by the Board as hereinbelow specified. The Assessment for each Lot shall be a pro rata share in relation to Member ownership of Common Areas. Should the Board at any time and from time to time determine, in the sole discretion of the Board, that the Assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Association, or in the event of emergencies, the Board shall have the authority to levy such additional Assessments as it shall deem necessary. Any such change shall be adopted consistent with the provisions of the Bylaws.

6.1.1. Annual Budget. The Board shall, in accordance with the Bylaws of the Association, establish an annual budget in advance for each fiscal year. The annual budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

6.1.2. General Operating Reserve. The Board, when establishing each annual budget, may, when deemed necessary or desirable, include therein a sum to be collected and maintained as a general operating reserve to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of Assessments by Owners, as a result of emergencies or for other reason placing financial stress upon the Association.

6.2. Liability for Assessments and Charges. A Lot Owner is liable for all Assessments and Charges coming due while he is the Owner. Any Person which acquires title to a Lot is jointly and severally liable with his predecessor in title for all unpaid Assessments and Charges against the predecessor for his share of the Charges and Assessments, including interest, late fees, reasonable attorneys' fees, and other costs and expenses of collection incurred by the Association up to the time of the transfer, without prejudice to any right the transferee may have to recover from the transferor the amounts paid on behalf of the transferor by the transferee.

6.3. No Waiver or Excuse from Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Areas, by abandonment of the Lot for which the Assessments are made, or by interruption in the availability of the

Residential Unit or the Common Areas for any reason whatsoever. No Owner may be excused from payment of his share of the Common Expenses unless all Owners are likewise proportionately excused from payment, except as provided below as to certain mortgagees.

6.4. **Delinquency or Default.** The payment of any Assessment or installment thereof due to the Association shall be in the default if not paid to the Association on or before the due date thereof. The Association may accelerate Assessments of an Owner delinquent in payment of any Assessment or installment thereof due. Accelerated Assessments shall be due and payable on the date the claim of lien is filed. Such accelerated Assessments shall include the amounts due for the remainder of the budget year in which the claim of lien is filed.

6.5. **Interest and Late Fees; Application of Payments.** Assessments and installments thereon paid on or before 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. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments 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. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorney's fees, and finally to delinquent Assessments. No payment by check is deemed received until the check has cleared.

6.6. **Recording of Priority of Lien.** The lien of the Association shall be effective from and after recording in the Public Records of the County, a claim of lien stating the description of the Lot encumbered thereby, the name of the record Owner and the amount and date when due. Such claims of lien shall include only Assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an Officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record. The lien of the Association shall be subordinate and inferior to the lien of any recorded first mortgage, unless the Association's claim of lien was recorded before the mortgage, but is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded. Any Lease of a Residential Unit is subordinate and inferior to any claim of lien of the Association, regardless of when the Lease was executed.

6.7. **Notice of Intention to Foreclose Lien.** So long as required by law, no foreclosure judgment may be entered until at least forty-five (45) days after the Association gives written notice to the Owner of its intention to foreclose its lien to collect the unpaid Assessments or Charges. If this notice is not given at least forty-five (45) days before the foreclosure action is filed, and if the unpaid Assessments or Charges, including those which have been accelerated (if applicable) and those coming due after the claim of lien is recorded, are paid before the entry of a final judgment or foreclosure, the Association shall not recover attorneys' fees or costs. The notice must be given by delivery of a copy of it to the Lot Owner or by certified mail, return receipt requested, addressed to the Owner at his last known address; and, upon such mailing, the notice shall be deemed to have been given. If after diligent search and inquiry the Association cannot find the Lot Owner or a mailing address at which the Owner will receive the notice, the court may proceed with the

foreclosure action and may award attorneys' fees and costs as permitted by law. The notice requirements of this provision are satisfied if the Owner records a notice of contest of lien. The notice requirements do not apply if an action to foreclose a mortgage on the Lot is pending before any court; if the rights of the Association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the Lot Owner.

6.8. **Other Remedies.** The Board has the authority to impose such other remedies or sanctions pertaining to non-payment of monetary obligations to the Association. Without limitation, the same include suspension of use rights in Common Areas and Association Property; suspension of voting rights; suspension of the right to serve on the Board; the attachment of rental income; denial of Lease approval requests; and acceleration.

6.9. **Suspension of Use Rights.** If an Owner is delinquent for more than ninety (90) days in paying a monetary obligation due to the Association, the Association may suspend the right of an Owner and his Residential Unit's Occupant, Licensee, or Invitee to use Common Areas, Common Facilities, or any other Association Property until the monetary obligation is paid.

6.10. **Suspension of Voting Rights.** The Association may also suspend the voting rights of a Lot Owner due to nonpayment of any monetary obligation of $1,000.00 or more to the Association which is more than ninety (90) days delinquent for so long as the Owner remains delinquent.

6.11. **Attachment of Rental Income When Lot is Delinquent.** Notwithstanding any other remedy available to the Association under this Declaration, the Bylaws, or applicable law, the Association has the following options when payment of Assessments or Charges is in default. The Association may, without order of the Court, direct rental income (by written notice to any applicable Tenant with copy to the applicable Owner) from Residential Units in default to be paid directly to the Association until all outstanding Assessments, Charges, other monetary obligations, interest, late fees, costs, collection expenses, reasonable attorneys' fees, and receiver's fees, if applicable, are paid in full. As an alternative, the Association may apply to a Court of competent jurisdiction, either in connection with a foreclosure suit, a personal suit, or otherwise, to have rental proceeds paid on account of a Residential Unit in default paid directly to the Association, the court registry, or a receiver, as the Court may direct. The Association may choose any of these courses of action, or other remedies as may be prescribed by law as the Board deems appropriate, without the same constituting a waiver or election of remedies.

6.12. **Lien for Charges.** Except as prohibited by law, there is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Owner or expenses which the Association incurs in regard to a Lot Owner, and which are not otherwise secured by the statutory lien for Common Expenses. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover attorneys' fees, costs, and expenses of collection.

6.13. **Mortgage Foreclosure.** If the mortgagee of a first mortgage 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 of 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 Chapter 720, Florida Statutes, as amended from time to time. The Association will not be considered jointly and severally liable for the payment of any monetary amounts with any subsequent buyer if the Association holds title due to its foreclosure action or by deed in lieu of foreclosure. 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 Charges, fines, Assessments, interest, late fees, attorney's fees and costs regardless of whether or not the Association has filed a lien and the Association will not be considered jointly and severally liable for the payment of any monetary amounts with any subsequent buyer if the Association holds title due to its foreclosure action or by deed in lieu of foreclosure. 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 Charges, fines, Assessments, interest, late Fees, attorney's fees, and costs coming due during the period of his ownership.

6.14. **Certificate as to Assessment, Mortgagee Questionnaires.** Within ten (10) days after request by an Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all Assessments and other monetary obligations owed to the Association by the Owner with respect to the Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association may charge a fee, if allowed and up to the maximum by law, to issue an estoppel certificate.

6.15. **Requirement to provide an Accounting.** Association Lot Owners can make a written request for a detailed accounting of any amounts owed to the Association, and the Association shall respond within fifteen (15) days. If the Association fails to provide the accounting within fifteen (15) business days of a written request, any outstanding fines of the requester are waived if the fine is more than thirty (30) days past due and the Association did not give prior written notice of the fines. After a Lot Owner makes such written request to the Board, they may not request another detailed accounting for at least ninety (90) calendar days.

7. INSURANCE.

7.1. **Association Insurance; Duty and Authority to Obtain.** A master policy of property and casualty insurance shall be maintained through the Association. Such insurance shall insure all of the Association structures to a reasonable amount of replacement. Such coverage shall afford protection against the loss or damage by fire and other hazards covered by standard extended coverage endorsement. Each Owner shall be assessed annually for the insurance premium, as part of their annual Maintenance fee. The Association shall also purchase such insurance as may be necessary on the Common Property to protect the Association and the Owners. Such insurance shall be maintained in the same manner and method as set forth above.

7.2. **Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board may determine to be in the best interest of the Association and Owners.

7.3. **Description of Coverage.** A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Owners or their authorized representatives upon request.

7.4. **Non-Liability for Fluctuations of Water Levels.** Neither the Association, nor any Officer, Director, employee, or agent of such entities, shall have any liability for aesthetic conditions, damage to lateral plantings or direct or consequential damages of any nature or kind caused by the fluctuation of water levels.

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

7.6. **Owner's Duty to Insure.** Each Lot Owner is responsible for insuring the real and personal property within his own Lot and Residential Unit. Each Owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance, including all risk, windstorm, and general liability.

7.7. **Association's Right of Entry.** For the purpose of performing the duties authorized by this Section, the Association, through its duly authorized agents and employees, shall act have the right, after reasonable notice to the Owner, to enter upon the Residential Unit at reasonable hours. In the event a Residential Unit is damaged, through an act of God or other casualty, that Owner shall promptly cause the exterior of their Residential Unit to be repaired and rebuilt substantially in accordance with the original architectural and landscape plans and specifications. It shall be the duty of the Association to enforce such repair and rebuilding of the Residential Unit to comply with this responsibility; however, the Association shall apply any insurance proceeds received by it on account of such act of God or other damage toward the cost of such repairs and rebuilding. Any deductible will be the responsibility of the Owner. Should the Owner refuse to honor his obligations under this paragraph, the Association may contract for such repairs and rebuilding as it deems necessary, and it shall have a lien against the damaged Lot for any such cost not fully covered by insurance. The Association shall have no liability to the Owner, whether for trespass or otherwise as a result of such entry upon the Lot.

7.8. **Insurance Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Owners and their respective

mortgagees.

7.9. **Damage.** Where loss or damage occurs to the items Maintained by the Association, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

7.9.1. **Estimate.** The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration and shall negotiate and contract for repair and reconstruction.

7.9.2. **Special Assessment.** If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the items, the Association shall promptly, upon determination of the deficiency, levy a special Assessment against all Owners for the deficiency. Such special Assessments need not be approved by the Owners. The special Assessment shall be added to the funds available for repair and restoration of the Property.

7.10. **Fidelity Insurance.** The Association shall obtain and maintain insurance or fidelity bonding of all natural persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time.

7.11. **Association as Agent.** The Association is hereby irrevocably appointed as agent for each Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Lots, Residential Units, or items Maintained by the Association.

8. **OCCUPANCY AND USE RESTRICTIONS.** The use of the Property of the Association shall be in accordance with the following provisions:

8.1. **Occupancy of Residential Units; Single Family Residence.** A Residential Unit shall be used only as a Single Family residence. As used in the Governing Documents, "Single Family" means one natural person, a group of two or more natural persons who customarily reside together as a Single Family housekeeping unit, each of whom is related to each of the others by blood, marriage (or domestic partnership) or adoption, or not more than two persons not so related, who customarily reside together as a single housekeeping unit. For purposes of these Governing Documents, reside means to sleep in the Residential Unit for more than one hundred and eighty (180) nights during a calendar year. No person may reside in a Residential Unit as an Owner, Resident, or Family member or for any reason Occupy the Residential Unit on an overnight basis for more than one hundred and eighty (180) days in a calendar year unless said person's Occupancy has been specifically approved by the Association, through the Board of Directors. In considering such requests, the Board may consider the Disapproval Criteria established herein to constitute good cause for disapproval and may charge a reasonable fee for review of Occupancy requests.

8.2. **Re-Subdivision or Combination of Lots.** None of the Lots graphically depicted on the Plat may be subdivided into two or more Lots, submitted to condominium use or any combination thereof. However, two Lots or one and one-third Lot, or one and one-half Lot, or one and two-thirds Lot may be combined to form a single Lot. In the event of conveyance of less than an entire Lot from the original Developer, the Association shall approximate a

Commented [6]: NOTE TO CLIENT: this number is based on stock standard minimum leasing numbers so that an owner cannot circumvent your new additions. (leasing clauses)

Commented [7]: NOTE FROM CLIENT:
Do we need this language for condominium since we are a single family neighborhood?

REPLY I can remove that line, but it would mean an unimproved Lot could be turned into a condo ;)

third or half of a Lot, and any division so accomplished shall be deemed to establish a third or half Lot for all purposes, including assessments. Owners shall not convey partial Lots unless the written and recorded consent of the ARC is first obtained. There shall be no conveyance of a fractional Lot under any circumstances, unless provision is first made to include the remaining fraction as part of the other adjacent Lot as a single Lot.

8.3. **Guest Suspension.** The Board may, at a duly noticed meeting, temporarily suspend, or permanently ban, a Guest from entering the Property if the Board finds that such person has engaged in a serious violation of the Governing Documents or applicable law upon the Association Property or has engaged in systematic violations of the Governing Documents or applicable law upon the Association Property. Prior to the imposition of such suspension or ban, the Owner shall be given at least fourteen (14) days' notice of a hearing before the Fining Committee to show cause why the suspension or ban should not be imposed. The decision of the Fining Committee shall be final and shall not be subject to any requirement for a hearing before any type of Committee.

8.4. **Residential Business Uses.** No trade or business may be conducted in any Residential Unit or on the Common Areas, except that an Owner, Tenant or other Occupant may have a home office within the Residential Unit so long as (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Residential Unit; (2) the business activity conforms to all zoning requirements for the Association Property; (3) the business activity does not involve persons coming on the Association Property who do not reside in the Property or door-to-door solicitation of Residents of the Association Property; and (4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. No Lot shall be used as a recreational facility in a manner inconsistent with a residential neighborhood environment.

The Association does not permit transient accommodations. Any such efforts to use the Residential Unit in a transient fashion and inconsistent with this Declaration will be denied. Offering Residential Unit through such programs as VRBO, HomeAway and Airbnb, and similar companies are not permitted. All rentals must be approved by the Board, or its designated agent.

8.5. **Animals.** No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept for commercial purposes on any portion of the Lot, except that dogs, cats, or other usual and common household animals may be permitted for personal enjoyment in a reasonable number determined by the Board in its discretion. The Board may promulgate rules and regulations dictating the permitted number of animals, maximum size, and types. Those animals which, in the sole discretion of the Board or property manager, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Residents shall be removed upon request of the Board or property manager after review, hearing and determination of the Fining Committee.

8.5.1. Animals must be under handheld leash or carried at all times while outside the Residential Unit, and therefore electronic devices such as fences to control animals are not permitted.

8.5.2. Excrement made by animals on property other than the Lot owned or leased by the pet owner shall be removed by Owners or handlers immediately, placed in a sealed bag or container, and deposited in the Owner’s solid waste container.

8.5.3. Animals that are, in the sole discretion of the Board of Directors, vicious, noisy, or otherwise unpleasant will not be permitted. In the event that an animal has, in the sole opinion of the Board, threatened a person or another's animal, has become a nuisance or an unreasonable disturbance, written notice will be given to the Owner or other person responsible for the animal, and the animal shall be removed from the Association after review, hearing and determination of the fining committee.

8.5.4. Any Owner or other Resident who keeps or maintains any animal shall, in exchange for and in consideration of the privilege to keep the animal, hereby indemnify and hold the Association and each Owner free and harmless from any loss, claim or liability of any kind or character of whatever nature arising from or related to the keeping of such animal within the Association.

8.5.5. The Board has the authority and discretion to make exceptions to the limitations in this regulation in individual cases and to impose conditions concerning the exceptions. The granting of exceptions shall not be deemed to be a waiver of the right to enforce the restrictions in other cases.

8.5.6. Feeding of wildlife and other animals, especially ducks, eagles, pelicans, turtles, alligators or fish is not permitted. Leaving food unattended so that wildlife or roaming animals can easily find it is considered to be feeding wildlife. The Association will not hesitate to notify the appropriate authorities if feeding wildlife occurs.

8.6. **Acts of Animals.** The Association shall have no liability for the actions of or damage caused by any animals within the Properties including but not limited to ducks, eagles, dogs, raccoons, bats, opossums, armadillos, foxes, snakes, squirrels, iguanas, bobcats, lizards, coyotes, skunks, alligators, or snapping turtles. All Owners, and their Families, Guests, Invitees, and Lessees are hereby made aware of the presence of hazards caused by certain animals within the Properties.

8.7. **Vehicles; Parking.** In order to ensure the accessibility to the Property by fire, ambulance and other emergency personnel, the Board shall have the authority to establish parking policies. Said restrictions shall become enforceable upon providing each Owner with notice thereof either through written notice to the Owners or the posting of signs. All vehicles (including golf carts) must be registered with the Association. Loud or modified exhaust vehicles of any kind shall not be permitted. Notwithstanding any language within this Declaration or the Bylaws purporting to follow Chapter 720 of the Florida Statutes or other "as amended from time to time" (i.e. Kaufman language), this section shall not be subject to such changes unless required by law as being (1) Procedural in nature, (2) of Retroactive Intent, and (3) satisfying Pomponio Analysis.

8.7.1. **Parking.** Parking is only permitted on a paved surface within a Lot. Parking on the sidewalk and overnight street parking is prohibited. Street parking shall not impede the access to fire hydrants, mail boxes, or another Owners' driveway. The Association may promulgate rules to accommodate street parking for special occasions. Any such accommodation will require the written approval of the Board. Damages caused by a vehicle, trailer, motor home, camper to the street, sidewalk, or another Owner's property due to the vehicle or trailer structure, weight or fluids will be the responsibility of the Owner.

8.7.2. **Vehicle Storage.** No camper, motor home, tractor, trailer, boat, watercraft, or any other of the kind as determined by the Board, may be parked on any Lot, sidewalk, street, or driveway of a Residential Unit if visible from the parcel's frontage or an adjacent parcel. Variances may be permitted in emergency circumstances, and shall be approved in written form. Boats or any other watercraft and associated trailers must be stored within the closed confines of a garage, within the Harborage boatyard storage area, or at an offsite location. Campers, motorhomes and trailered boats may be parked in the driveway or in the street in front of a Residential Unit, or Lot temporarily for the purpose of loading or unloading or as approved by the Board. For these purposes, "temporarily" will not mean either of the following:

8.7.2.1. Parking the vehicle on a Lot for period of time of more than ten (10) consecutive hours; or

8.7.2.2. Parking the vehicle on a Lot on a regular or recurring basis even though not parked for a period of more than ten (10) consecutive hours on any particular occasion, other than during the course of construction of improvements on the Lot;

8.7.2.3. Parking the vehicle on a Lot overnight.

8.7.3. **Licensed and Operable.** Unlicensed vehicles (such as gas powered motorized bikes or motorcycles, go-karts, off-road vehicles) shall not be operated within the Subdivision, nor any vehicles without proper sound control devices. All permitted vehicles shall be operated in a safe manner and within speed limits established by the Association. Golf carts shall be used by licensed drivers or as specified by Florida laws.

8.7.4. **Repairs.** Vehicle maintenance may only be performed within the confines of a garage. No vehicle maintenance shall be performed on a driveway, street or Common Property.

8.7.5. **Driveways.** Each driveway or parking area within the Subdivision will be constructed of concrete, brick or other hard surface material approved by the ARC. No asphalt, gravel, rock, shell, dirt, clay or other soft or loose surface driveway or parking area will be permitted within the Subdivision. Parking area and driveway materials and design a subject to ARC approval.

8.7.6. **Garages.** Each Residential Unit within the subdivision will have a garage. Each garage will enclose the space of not less than five hundred (500 sq ft) square feet. Each garage will have one or more doors which, when closed, will have the effect of precluding access into the garage. No carports or other open garages will be permitted within the subdivision. Garages shall be equipped with electronically operated doors.

8.8. **Towing.** Any vehicle that is parked in violation of the Association's restrictions may be towed or booted. No prior notice is required. All costs and expenses shall be borne by the owner of the vehicle. The Association is not liable for trespass or for any damage to a vehicle that is towed or booted by a licensed and insured company. Owners and Lessees

Commented [8]: NOTE TO CLIENT:
Florida Statute 720.3045 was created during the recent legislative session as part of House Bill 437 and prevents associations from restricting the installation, display and storage of "any items" on a parcel that are not visible from the parcel's frontage or an adjacent parcel, unless same are prohibited by general law or local ordinance. This supersedes anything your documents may say.

are responsible to see that all of the Occupants of their Residential Units, Guests, and Invitees, comply with the Association's parking restrictions. Owners shall indemnify, defend, and hold the Association harmless from all claims against the Association on account of towing or booting a vehicle, including claims against the Association asserted by any Occupant of the Residential Unit, Guests, and Invitees, excepting only if it has been judicially determined that the Association is guilty of gross negligence or a higher degree of culpability.

8.9. **Aesthetic Controls.** No improvement of any kind including, but without limitation, buildings, fences, walls, signs, site paving, grading, parking, building additions, screen enclosures, decorative structures, mailboxes, and barrier landscaping, shall be erected, placed or maintained on a Lot unless and until the specifications, materials, building and site plans therefore have been presented to and approved by the Architectural Review Committee of the Association ("ARC"). The Association shall promulgate reasonable procedures and guidelines for the review process, and Lot Owners shall be bound by those procedures and guidelines, as well as by the substantive rules to be applied by the ARC. Some house designs may be unacceptable for a particular Lot because of similarity to homes in the immediate neighborhood. If, in the judgment of the ARC, the massing, basic style, roofline, exterior materials colors or other features of a home are too similar to its neighbors, the design will not be approved. If the plans and specifications reflect the construction of improvements which are consistent with this Declaration, they will be approved by the ARC. If they reflect the construction of improvements which are not consistent with this Declaration, they will be disapproved by the ARC and the notice of disapproval will recite with specificity the inconsistencies which are the reason for disapproval. The Association may provide for reasonable fees to be paid to the Association or to professionals employed by the Association for review of matters which require ARC approval.

If the ARC denies an Owner's request or application for the construction of a structure or other improvement on a Lot, the ARC must provide written notice to the Lot Owner stating with specificity the rule or covenant on which the ARC relied when denying the request or application and the specific aspect or part of the proposed improvement that does not conform to such rule or covenant.

8.10. **Air Conditioning Units.** Air conditioning units shall be adequately screened to prevent being viewed from any street, the method of screening is subject to ARC approval. Window air conditioning units are not permitted in the subdivision. Wall air conditioning units may be affixed to buildings only with ARC approval.

8.11. **Antenna.** 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 less than one meter in diameter, an aerial designed to receive over-the-air television broadcast, or an antenna designed to receive multi-channel, multi point distribution service which may be installed only at a location on a Lot approved by the ARC. In approving the installation and location of any antenna the ARC shall comply with all applicable laws, whether State or Federal.

8.12. **Boats and Boatyard.** The Board or ARC shall promulgate rules of use for the boatyard and the boat ramp that is for communal use. Storage of anything in the boatyard shall be for Owners only and may be subject to board approval in its sole discretion. Lessees or Guests shall not be permitted to store anything in the boatyard. The parking of vehicles and boat or watercraft trailers will be in designated areas by the Association. Vehicles not

registered in the Harborage and parked outside the designated area will be subject to tow per Section 8.8. herein.

Boats that are partly or fully submerged shall be removed by the Owners, and if the Owner does not comply within fourteen (14) days of the notice, the Association shall remove the sunken craft, and the cost shall be levied against the Owner and considered an assessment hereunder. If no Owner is found of the watercraft, the Association shall remove the submerged craft and the cost shall be a Common Expense. No boat ramps are permitted on any Lot. All Boats or other motorized watercraft being trailered or operated within the Harborage must be registered with the Association.

Commented [9]: NOTE TO CLIENT: Must give notice, not from the occurrence. Let me know the timeframe from this info. Normally a notice gives 14 days to rectify from occurrence. If you sent the notice as soon as someone spotted it, then you could still work with the 14 days.

Owners who have leased their Lot are permitted to store an item in the boatyard storage area, but may not have access to the lakes and boat ramp while the Lot is being leased. A Lessee who desires to use a boat or watercraft within the Harborage on the lakes or the canal boatyard or canal ramp must be registered with the Association. This includes providing proof of insurance, paying the $500 administrative fee and a $1000 security deposit for any damages that may be incurred by the Lessee. Such deposits will be accounted for as being separate from other Association funds. Only the approved Lessee may trailer or operate a boat or watercraft within the Harborage.

All Owners take full responsibility for the safe operation of watercraft and for any damages incurred to personal or Association property from the Owner's, Lessee's, or Guest's negligent use thereof. The Association has the right to promulgate Lake and Boatyard Rules as amended from time to time.

8.13. **Docks**. Docks and floating docks may be permitted subject to ARC approval. Docks shall be a maximum of five hundred (500 sq ft) square feet and setbacks must be twenty (20') feet from any property line. Floating docks must not impede the use of a neighboring dock with a minimum setback of twenty (20') feet. This setback may be reduced to ten (10') feet with the written neighboring Owners approval.

8.14. **Exterior Lighting.** Each building will have exterior night lighting to discourage theft and vandalism within the Subdivision. As a minimum, each completed home shall have an ARC approved operative lamp post of a style consistent with the architecture and color of the home and/or landscape lighting. The lamp in the post or the landscape lighting shall be equipped with a solar activated switch to operate the lamp or landscape lighting from sunset to sunrise. The lamp post shall be located between the front of the home and the road or private drive easement. Landscape lighting must include at least three (3) up lit features approved by the ARC. All exterior lighting is subject to the approval of the ARC. The ARC shall consider light position, lumen/brightness, color, mounting structure and effect on adjacent properties when approving a new or replacement lamp.

8.15. **Fences.** Fences shall not be permitted which enclosed or define the boundary lines of a Lot. Fences, walls or screens may be used, subject to ARC approval, to enclose service areas, patios, swimming pools or other areas requiring privacy.

8.16. **Flags.** Any Owner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4 1/2 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, Space Force or Coast Guard, a POW-MIA flag, or a first responder flag. Any flagpole must be approved by the ARC and shall comply with specifications set by the County and State.

8.17. **Garbage and Trash.** Garbage, trash and other refuse may be stored on a Lot for collection or other disposition for no more than a reasonable period of time, and then only in containers which are reasonably except for to the Association. Trash containers and other personal property stored on or used on a Lot will be stored in such a manner as not to be visible from any road easement, street, highway or other Lot. Storage may be below ground, inside buildings or within a visual barrier of aesthetically pleasing appearance which is approved by the Association consisting of earth-mounding, landscaping, walls, fencing or combination thereof. Garbage, trash, and other refuse may be placed at the curb directly in front of the property no longer than twenty four (24) hours before or after designated collection time. A maximum of two 65 gallon or less wheeled garbage containers may be stored against the side of the building in a location that is visible to others assuming the lids remain fully closed, and the location is at least 10 feet set back from the front of the building, or immediately adjacent to the properties garage side-entry door. Additional trash, construction materials, lawn equipment, planting materials or other personal property must be stored in such a manner as to not be visible from the road or adjacent property. Storage may be inside buildings or within a visual barrier such as landscaping, walls, fencing, earth mounding, or combination thereof that must comply with all Association architectural and aesthetic guidelines and be ARC approved.

8.18. **Hurricane Shutters and Hurricane Protection.** The ARC shall adopt and approve models, styles and colors of hurricane protection products as a standard for use in the Association. No hurricane shutter or protection except of the standard model, color and style adopted or approved by the ARC shall be used in or upon the Property. Shutters and protection products installed and existing prior to the adoption of a standard are grandfathered, however any replacement of existing shutters or protections must comply with the new guidelines and building codes. The ARC cannot deny an application for installation, enhancement, or replacement of certain hurricane protection. All specifications adopted by the Board and hurricane protection installed by the Owners shall comply with the applicable building code. Owners shall be responsible for the Maintenance, repair and replacement of any hurricane shutters, and other hurricane protection, if installed. Protective shutters and hurricane shutters may not be activated for use more than seven (7) days before the projected arrival of a hurricane or tropical storm. Protective shutters and hurricane shutters shall be deactivated within ten (10) days after the hurricane or tropical storm or threat has passed unless the area is under an evacuation order or another hurricane or tropical storm is imminent. If the area is under an evacuation order, the ten (10) day time frame is extended to begin once the evacuation order is lifted.

8.19. **Lawn Equipment.** Playground equipment and other lawn equipment, including, but not limited to grills, swings, Merry Go round, tents, playpens, sandboxes and toys, maybe located in the rear yard of a home, not in the front yard. Clothes lines and drying racks may be used only at a location on a Lot approved by the ARC. Windmills shall not be permitted.

8.20. **Mailboxes.** Mailboxes shall be of a design prescribed by the ARC and located pursuant to ARC specifications. Mailboxes shall be located within the Road Rights of Way. There shall be two mailboxes for each support for Lots fronting on the East Lake and the north shore of the West Lake; there shall be four mailboxes for each support in all other areas. The ARC may approve variances regarding the number of mailboxes on each support to accommodate the development of Lots, which vary from platted Lots. The Association shall maintain and replace the common support, and each Owner shall maintain and replace their individual mailbox.

Commented [10]: NOTE TO CLIENT: Owners, by newly approved law, can not be fined if they leave it out for up to 48 hours (essentially 24 hours longer than what you state).

Commented [11]: NOTE TO CLIENT: You cannot outright ban outdoor laundry drying. You can limit where they can put it though. Laundry is usually where it cannot be seen from the road or other units if possible. This law supersedes any of the HOA. You cannot make rules to disallow it.

Commented [12]: NOTE TO CLIENT:
However, the Association under the premise of a neighborhood wide mailbox refurbishment, the Association has the right to maintain the post and mailbox at the Association's discretion and expense. (Basically we have done this after some Hurricane wind or storm surge damage.

REPLY So essentially, the Association wishes to be responsible for the mailbox as well?

8.21. **Nuisances, Offensive or Illegal Activities.** No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition that will be obnoxious to the eye, nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Occupants or surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Association Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Association Property or which will increase insurance rates on any Residential Unit or on the Common Areas. No apparatus or machine of any sort shall be used or maintained on the Association Property which causes interference with television or other such reception in other Residential Units.

8.22. **Roof.** Roof material shall be either cement tile, clay tile or press formed aluminum-zinc coated steel (26 gauge or thicker) panels with ceramic coated colored chip finish in a profile which matches traditional roofing tile, Spanish S-tile or hand split shake with colors which comply with the ARC Guidelines. However, the ARC shall have absolute discretion to approve other materials of a quality and appearance which are consistent with the objectives of this Declaration or the approved architectural guidelines, provided that conventional asphalt or fiberglass shingles, mill finish (galvalume) sheet metal or standing seam roofing or fluoropolymer or modified silicone-polyester coated roofing products shall not be permitted.

8.23. **Rules and Regulations.** The Board may, from time to time, adopt and amend Rules and Regulations governing the and restricting the use and Maintenance of the Lots, provided however, that copies of such Rules and Regulations are furnished to each Owner prior to the time that they become effective.

8.24. **Signs and Graphics.** All signs located within the Subdivision will be conservative in size, shape, color and graphics, and otherwise aesthetically pleasing in appearance. All signs are subject to approval by the ARC. Signs will not be located on any building exterior walls or "stand out" from exterior wall surfaces on any Lot unless approved by the Association in advance. Signs may be lighted; however, flashing lights of any kind will not be permitted. No more than one (l) sign may be erected or maintained on any one Lot at any one time. No sign erected may have a surface area on any one side of more than one square foot, excepting only the following signs:

8.24.1. Signs advertising a Lot and/or the improvements thereon for sale or lease may have a surface area on any one side of not more than three (3) square feet and shall conform with the Architectural Guidelines and Review Procedures. The Architectural Guidelines and Review Procedures designate specifications for said signs, including height, width, materials, wording, and colors. The proposed location of said sign upon the subject property shall be approved by the ARC.

8.25. **Solar Collectors. S**olar collectors may be installed on the roof of a Residential Unit provided the Owner receives prior written approval of the ARC, and the solar collectors are installed and Maintained in accordance with Section 163.04, Florida Statute. and applicable County regulation. The Owner of any property with solar collectors shall be responsible for damages caused by the solar collectors.

8.26. **Temporary or Permanent Structures.** Other than one Residential Unit, and related garage, no free-standing structure, trailer, house trailer, tent, shack, shed, barn, or other outbuilding shall be used or placed on any Lot or the Property at any time either temporarily or permanently without the prior written approval of the ARC as to its location, design, architecture and appearance.

8.27. **Waterfront.** Owners may not alter the waterfront of a Lot in any manner, including excavation, fill or construction of improvements, unless approval is first obtained from the ARC. Owners shall take reasonable precautions to avoid the carrying of detrimental substances into the lakes or canals through run-off or other means as described on the development permits for the Subdivision. No heavy metal herbicides may be used within ten (10) feet of the shoreline. Owners are responsible for preventing any vegetation trimmings or other yard waste, plastics, or any other man made liquid or solid to enter the lakes or canal. Owners are responsible for the immediate removal of such items. Boat ramps shall not be constructed on any Lot. Docks may be constructed on any Lot and are subject to ARC approval. Owners shall permit reasonable access to the waterfront, over land and over water, to the Association and to governmental agencies for the purpose of monitoring water quality.

8.28. **Use of Lakes And Canals.** The Owners of property in the Subdivision, and the Tenants or Guests of the Owners, may utilize the lakes for any lawful purposes, subject to rules to be promulgated by the Association and Guests must be in the presence and direct supervision of an Owner or Resident. Owners may not have access to the lakes or boat ramp if their Lot is being leased. Motor driven boats operated in the lakes shall not exceed idle speed within 150' of any shoreline. The Owners of property in the Subdivision shall not operate motor boats in canals in or adjacent to the Subdivision at other than idle speed. Boats shall not be anchored in lakes overnight, but may be moored to docks overnight. Boats shall not be used as overnight accommodations. Any boat left in the lakes or canals shall be Maintained in good working condition and good appearance. The lakes within the Subdivision are for the exclusive use of Lot Owners and their guests. Owners, their Tenants, or Guests shall not operate or maintain in the canals, boats with a fixed draft in excess of the draft allowed by applicable governmental permits.

9. **LEASING OF RESIDENTIAL UNITS.** In order to foster a stable residential community and prevent a transient atmosphere, the Leasing of Residential Units by their Owners shall be restricted as provided in this section. All Leases of Residential Units must be in writing. An Owner may Lease only his entire Residential Unit, 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 Lot that was not approved under the existing Lease of the Lot.

9.1. **Regulation by Association.** The Board of Directors, or its designated agent or property manager, shall have the authority to approve or disapprove all Leases and Rentals. The Board shall have the authority to promulgate or use a uniform Lease, license or Rental application and require such other information from the proposed Lessees as is appropriate under the circumstances.

9.2. **Fees and Deposits for the Lease of Residential Units.** Whenever herein the Board's approval is required to allow the Lease of a Residential Unit, the Association may charge the Owner a preset fee in addition to the costs of any background and credit checks for processing the application. Such fee shall not exceed the maximum amount allowed by

law. A separate fee may be charged for each person intending to Occupy the Residential Unit except only one fee may be charged for a married couple 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 Association Property.

9.3. **Term of Lease and Frequency of Leasing.** Leasing during the first two (2) years of ownership is prohibited, unless a written exemption is made with good cause by the Board. No Residential Unit may be Leased more often than times (3) times in any calendar year, with the minimum Lease term being six (6) months. For purposes of this restriction, the first day of Occupancy under the Lease shall conclusively determine in which year the Lease occurs. No Lease may be for a period of more than one (1) year. However, the Board may, in its discretion, approve the same Lease from year to year. No subleasing or assignment of Lease rights by the Lessee is allowed.

9.4. **Notice by the Owner**. An Owner intending to Lease their Residential Unit shall give to the Board or its designee written notice of such intention at least fourteen (14) days prior to the first day of Occupancy under the Lease together with the name and address of the proposed Lessee and Occupants, a fully executed copy of the Lease, and such other information as the Board may reasonably require including but not limited to a credit report, background check, and proof of lawful residency. The Board may require a personal interview with any Lessee, proposed Occupant, and his spouse, if any, as a precondition to approval.

9.5. **Board Action**. After the required notice and all information or interviews requested have been provided, the Board, or its designated agent, shall have fourteen (14) days in which to approve or disapprove the proposed Lease. If the Board, or its designated agent, neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of an approval, and on demand the Board, or its designated agent, shall issue a written letter of approval to the Lessee.

9.6. **Disapproval Criteria**. 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 "Disapproval Criteria":

9.6.1. The Person seeking approval (which includes all proposed Occupants or Residents) has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for:

9.6.1.1. a capital, first, or second degree felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

9.6.1.2. a felony involving damage to or theft of property;

9.6.1.3. a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior;

9.6.1.4. a first or second degree felony involving illegal drugs;

9.6.1.5. any drug offense involving the manufacture and/or distribution of illegal drugs.

9.6.2. The Person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;

9.6.3. The application for approval on its face, or the conduct of the applicant, indicates that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Association.

9.6.4. The proposed Occupant makes any material misrepresentation during the application process, which shall justify retroactive disapproval of the application upon discovery of the misrepresentation.

9.6.5. The Person seeking approval has a history of disruptive behavior or disregard for the rights and property of others as evidenced by his conduct in other housing facilities or associations, or by his conduct in this Association as a Tenant, Resident, Occupant or Guest;

9.6.6. By way of example, but not limitation, an Owner allowing a Tenant or transferee to take possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with applicable restrictions.

9.6.7. The Owner or Person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner or has made material misstatements or withheld material or information during the application process;

9.6.8. The Owner has a history of Leasing their Residential Unit without obtaining approval, or Leasing to troublesome Lessees or refusing to control or accept responsibility for the Occupancy of their Residential Unit;

9.6.9. The Owner has a history of disregarding the Rules and Regulations of the Association, including without limitation, prior covenant violations, delinquencies or disregard of the Leasing provisions.

9.6.10. 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;

9.6.11. All Assessments, fines and other Charges against the Lot have not been paid in full.

9.7. **Unapproved Leases.** Any Lease of a Residential Unit not approved pursuant to this Section shall be void and unenforceable unless subsequently approved by the Board. The Association shall have the right to evict the Tenant without securing the consent from the Owner. For the purpose of such eviction, the Association shall be deemed to be an agent of the landlord and all attorney fees and costs shall be the responsibility of the Owner and shall constitute a Charge and may be collected as a delinquent Assessment as provided for in this Declaration.

9.8. **Tenant Agreement to Covenants.** 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 Residential Unit 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. All Leases shall be deemed to provide that a violation of the Governing Documents is grounds for damages, termination, and eviction and that the Tenant and the Owner agree that the Association may proceed against either the Owner or the Tenant and the Owner or the Tenant shall be responsible for the Association's costs and expenses, including attorney fees and costs, secured by a lien against the Lot.

9.9. **Collateral Assignment of Rents.** In the event an Owner is in default in payment of Assessments for Common Expenses or any other monetary amounts owed to the Association, the Association shall have the authority to collect rents directly from the Owner's Tenant. The authority granted in this Section is in addition to any authority granted by law.

9.10. **Attorney Fees and Costs.** All attorney fees and costs associated with any legal action taken against a Tenant or Occupant shall be the responsibility of the Owner. This includes, but is not limited to, all attorney fees and costs incurred by the Association in connection with a covenant enforcement matter, collateral assignment of rents, or legal action with regard to a Tenancy or Occupancy issue, termination of a Lease, or eviction of any Lessee or Occupant.

9.11. **Use of Common Areas and Association Property.** To prevent overtaxing the facilities, an Owner whose Residential Unit is Leased may not use the lakes, the boat ramps, or any other recreation facility. The Owner may continue to store an item in the boatyard. Tenants are not permitted to store any item in the boatyard.

10. **TRANSFER OF OWNERSHIP.** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the property, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Lot shall be subject to the following provisions:

Any person who was not approved as part of the conveyance to the present 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 Lot.

10.1. **Transfers.**

10.1.1. **Sale or Gift**. No 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.

10.1.2. **Devise or Inheritance**. Notwithstanding any other provision hereof, if any 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. The approval shall not be unreasonably 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.

10.1.3. **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 herein.

10.1.4. **Transfer Committee.** 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) 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.

10.2. **Notice to Association.**

10.2.1. **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 recipient, a copy of the sales contract, if any, and such other information as the Board may reasonably require including but not limited to a credit report, background check and proof of lawful residency. The Association may charge a reasonable Fee in addition to the costs of any background and credit checks for the cost of processing each applicant. The Board may require a personal interview with any purchaser or recipient and his spouse, if any, as a precondition to approval.

10.2.2. **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 Lot following the procedures in this Declaration.

10.3. **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.

10.4. **Board Action**. Within fourteen (14) days after receipt of the required notice and all information or interview requested, or not later than sixty (60) days after the notice required 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.

10.5. Disapproval.

10.5.1. With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes. If the Board disapproves a transfer for good cause, the Association has no duty to purchase the Lot or furnish an alternate purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board. The previously stated Disapproval Criteria may be deemed to constitute good cause for disapproval.

10.6. Exception. These transfer provisions 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 Residential Unit 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. The Association retains the right to approve or deny Occupancy.

10.7. 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.

10.8. 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, and/or as a capital contribution. A separate Fee may be charged for each person who is obtaining an interest in the Lot except if such persons are married.

10.9. Required Documents. Each prospective purchaser who has entered into a contract for the purchase of a Lot is entitled, at the seller's expense, to a current copy of all of the required documents under Florida Statutes as amended from time to time.

11. ENFORCEMENT.

11.1. Enforcement. Enforcement of the Governing Documents 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, rule, 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 covenant, condition or restriction contained in the Governing Documents for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

11.2. Owner and Member Compliance. The Governing Documents of the Association shall apply to Members and all persons to whom a Member has delegated his right of use in, as well as to any other person Occupying any Residential Unit 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 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.

11.3. **Self-help Remedies.** Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Association and its authorized agent or representative, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the Lot, any construction or other violation that may be or exist thereon. The Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement, or removal.

11.4. **Fines and Suspensions.** The Board may levy fines and suspensions against Members, or Members' Tenants or Guests, or both, who commit violations of Chapter 720, Florida Statutes, the provisions of the Governing Documents, or reasonable Rules of the Association, or who condone such violations by their Family members, Guests or Lessees or who fail to pay Assessments or other Charges. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any single fine exceed the maximum amount allowed by law. The maximum accrued fine for a continuing violation shall not exceed $5,000.00. If allowed by law, fines shall be secured by a lien on the Owner's Lot. Suspensions of the use of Common Areas, Facilities, and non-essential services may be imposed for a reasonable period of time to deter future violations.

11.4.1. **Cured Violations.** If a violation has been cured in the manner specified in the written notice required in Florida Statutes, a fine or suspension may not be imposed.

11.5. **Suspensions and Fines without Hearing.** The foregoing notwithstanding, as provided in 720.305(2)(b) and (3), Florida Statutes, no prior notice or opportunity for a hearing is required for the imposition of a fine or suspension upon any Member because of the failure of the Member to pay Assessments or other charges when due if a Member is more than ninety (90) days delinquent. All suspensions imposed under pursuant to F.S. 720.305(3) must be approved at a properly noticed Board meeting.

11.6. **Voting Suspension and Board Eligibility.** The Association may suspend, with no prior notice or opportunity for a hearing, the voting rights of a Member for the nonpayment of any monetary obligation that is delinquent in excess of ninety (90) days. The suspension must be approved at a properly noticed Board meeting and upon approval, the Association must notify the Owner by mail or hand delivery of the suspension. A person who is delinquent in the payment of any Fee, fine, or other monetary obligation to the Association for more than ninety (90) days is not eligible for Board membership.

11.7. **Mandatory Mediation.** In the event of any dispute as defined in Section 720.311, Florida Statutes, as that section may be amended from time to time, between an Owner and the Association arising from the operation of the Association, the parties must submit the dispute to mandatory mediation. Nothing herein shall be construed to require mediation of

disputes relating to the collection of any Assessment, fine, or other financial obligations.

11.8. **Availability of Remedies.** Each Member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to defaults and abatement of violations regardless of the harshness of the remedy utilized by the Association and regardless of the availability of other legal remedies. It is the intent of all Members to give the Association methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due to it and to preserve the rights of the majority to enjoy the Property free from unreasonable disruptions and annoyance.

11.9. **Attorneys' Fees.** In any legal proceeding arising out of an alleged failure of a Guest, Tenant, 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.

12. AMENDMENTS.

12.1. **Proposal.** Amendments to this Declaration may be proposed at any time by the Board of Directors, or by written petition to the Board signed by at least twenty (20%) percent of the Voting Interests of the entire membership. If the proposal is made by such written petition, the proposed amendment(s) must be submitted to a vote of the Members not later than the next annual meeting.

12.2. **Notice.** The subject matter of proposed amendments shall be included in the notice of any meeting at which a proposed amendment is to be considered or in connection with documentation for action without a meeting.

12.3. **Vote Required.** Except as may otherwise be provided by law, or by specific provision of the Governing Documents, this Declaration may be amended at any time if the proposed amendment is approved by at least two-thirds (2/3rds) of the Voting Interests present and voting, in person or by proxy, at any annual or special meeting called for that purpose, or by written consent of two-thirds (2/3rds) of the Members in lieu of a meeting. No amendment shall change an Owner's share of liability for Assessments or voting rights unless the Owner consents to the amendment.

12.4. **Certificate and Recording**. A copy of each adopted amendment shall be attached to a certificate stating that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Official Record Book and Page of the Public Records where the Declaration is recorded and shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment(s) are recorded in the Public Records of Lee County, Florida.

12.5. **Approval of South Florida Water Management District.** No Amendment may be made which would affect the surface water management facilities, without the prior approval of the South Florida Water Management District, or its successor.

12.6. **Exceptions**. Wherever in this Declaration. the consent, approval, or affirmative vote of more than one-third (1/3) of the total Voting Interests is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals or votes may not be amended except by the same vote required to authorize or take the action.

13. GENERAL PROVISIONS.

13.1. **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.

13.2. **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 sent electronically, delivered, or mailed with the proper postage affixed to the last known address of the Owner appearing in the records of the Association. 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.

13.3. **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 Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then the law in effect at the time shall control and such provision will be deemed null and void but have no effect on the remaining provisions herein.

13.4. **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.

13.5. **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.

13.6. **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.

13.7. **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.