

PROPERTY INFORMATION PACKAGE

3 Luxury Waterfront Homesites In Prestigious Marsh Island Club

Vero Beach, Indian River County, Florida



Now Accepting Offers

*Max Spann Real Estate & Auction Co.
PO Box 4992, Clinton, NJ 08809
888-299-1438 | www.maxspann.com
1 A Licensed FL Real Estate Broker*



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EXECUTIVE SUMMARY

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

3 Luxury Waterfront Homesites In Prestigious Marsh Island Club Now Accepting Offers

Lot #26: 9180 Marsh Island Drive,
Lot #30: 9265 E. Marsh Island Drive,
& Lot # 15: 9250 E. Marsh Island Drive
Vero Beach, Indian River County, Florida 32963

Max Spann Real Estate & Auction Company is pleased to exclusively offer three luxury waterfront homesites within Marsh Island Club, a prestigious community with unique style and privacy.

Marsh Island, a gated, residential community and private protected marina. Situated between the Intercoastal Waterway and Indian River Lagoon, only 1/2 mile from the Atlantic. The enchanting island offers spectacular views and award winning architecture in incomparable surroundings. From the North Island view of Pelican Island Wildlife Refuge, to the Island's Eastern exposure, with breathtaking intercoastal views. Magnificent private clubhouse provides residents a quiet spot to savor river life, enjoy community gatherings, and is available to any resident to hold private functions.

A nature lover's paradise! Enjoy a stroll along the private boardwalk to the community gazebo at the edge of the intracoastal or walk over to the neighboring Environmental Learning Center. Sandy beaches are a quick bike ride away and minutes to downtown Vero Beach for boutique shopping, casual and fine dining, Riverside Theatre, and the Vero Beach Museum of Art. Marina boat slips subject to availability for purchase or lease.

Don't miss this fantastic opportunity to develop one, two, or all three lots!

Call Today to Schedule a Preview!

Contact:
Lawrence Samberg
Managing Director, Max Spann Real Estate & Auction Co.
Cell: 201-259-8236 | FL Office: 772-492-6365
Email: lsamberg@maxspann.com
www.maxspann.com



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

TABLE OF PROPERTIES				
ADDRESS	LOT	ACREAGE (+/-)	APPROXIMATE TAXES	HOA FEES + MOWING (PER MONTH)
9180 MARSH ISLAND DR	26	0.17	\$3,279	\$495 + \$60
9265 E MARSH ISLAND DR	30	0.27	\$1,851	\$495 + \$60
9250 E MARSH ISLAND DR	15	0.27	\$6,134	\$495 + \$60

Disclaimer: The Property is sold "as is".

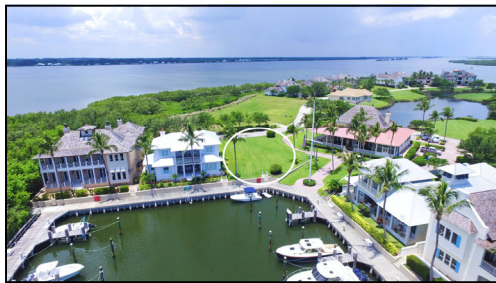
All information regarding the property for sale are from sources deemed reliable, but no warranty or representation is made by the Seller, Auctioneer, Realtor, Affiliates or Employees of the Realtor to the accuracy or reliability thereof and same is subject to errors, omissions, other conditions, or withdrawal without notice. Prospective Purchasers must rely solely upon their own investigations and due diligence.



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

AERIAL



Lot 26: 9180 Marsh Island Drive



Lot 30: 9265 E. Marsh Island Drive



Lot 15: 9250 E. Marsh Island Drive



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

AERIAL
LOT #26
9180 MARSH ISLAND DR



Boundary lines approximate



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

AERIAL

LOT #30

9265 E. MARSH ISLAND DR



Boundary lines approximate



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

AERIAL
LOT #15
9250 E. MARSH ISLAND DR



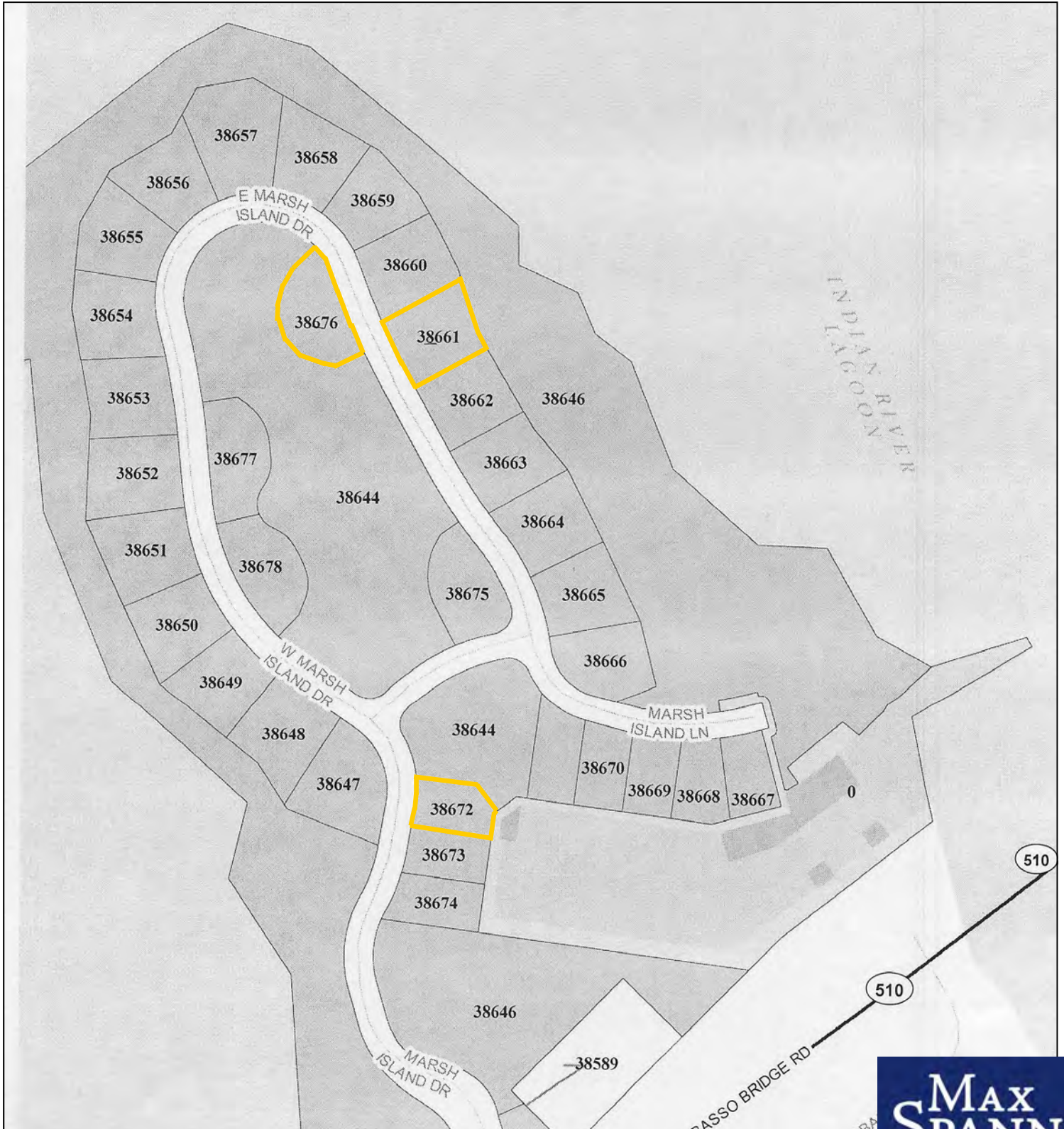
Boundary lines approximate



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

SITE MAP



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

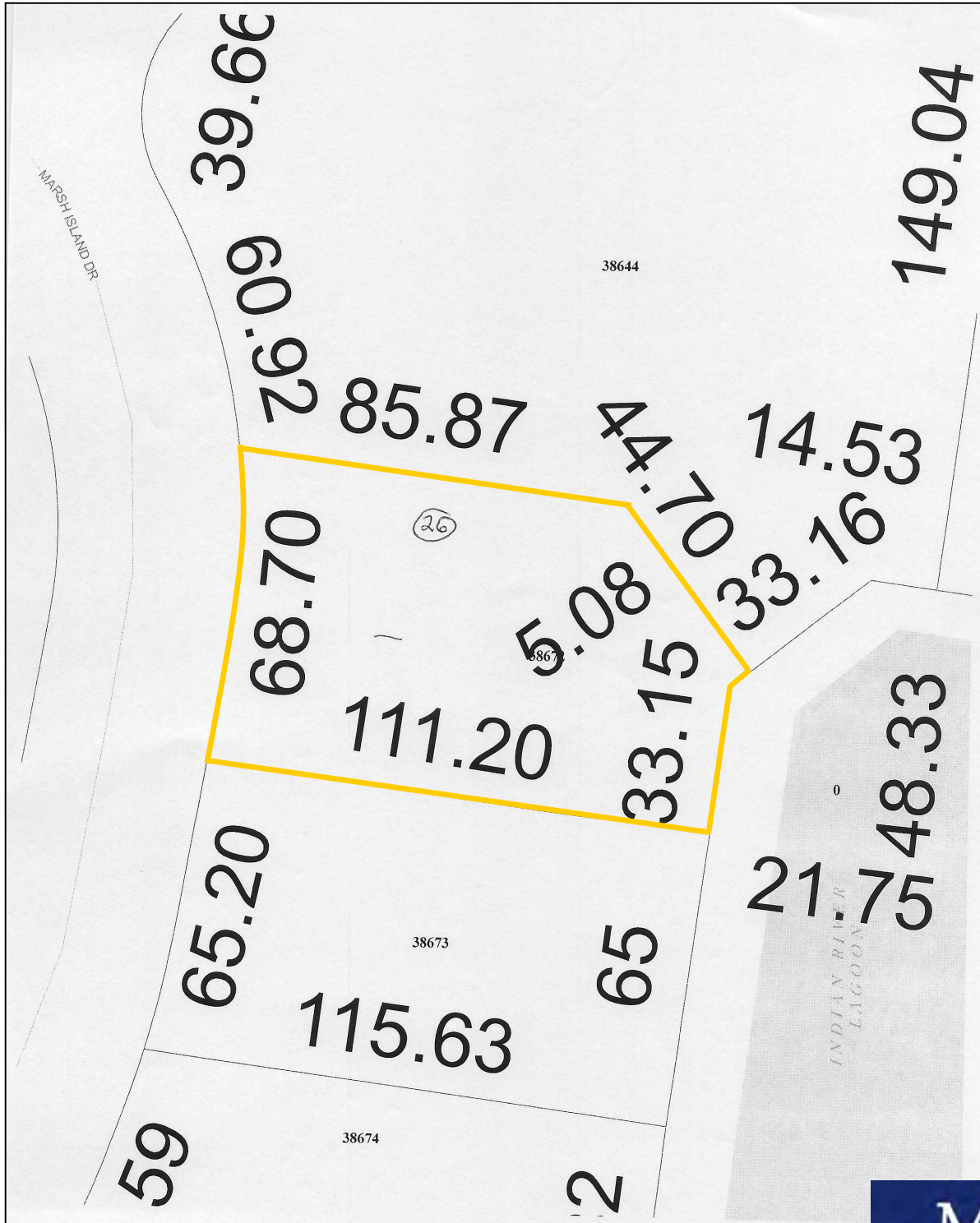
TAX INFORMATION



PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

TAX INFORMATION



Lot #26: 9180 Marsh Island Drive

2018 TRIM Notice

**DO NOT PAY
THIS IS NOT A BILL**

DAVID C. NOLTE, CFA, ASA
INDIAN RIVER COUNTY PROPERTY APPRAISER

NOTICE OF PROPOSED PROPERTY TAXES AND
PROPOSED OR ADOPTED NON-AD VALOREM
ASSESSMENTS INDIAN RIVER COUNTY TAXING
AUTHORITIES

Tax Code: 1

Site Address:
9180 MARSH ISLAND DR VERO
BEACH, FL 32963

Prop ID: 38672

Geo ID: 31392700005000000026.0
Legal Description of Property:
MARSH ISLAND PD - LOT 26 PBI
16-71

TAXING AUTHORITY TAX INFORMATION								
TAXING AUTHORITY	PRIOR (2017) TAXABLE VALUE	YOUR FINAL TAX RATE AND TAXES LAST YEAR (2017)		CURRENT (2018) TAXABLE VALUE	YOUR TAX RATE AND TAXES THIS YEAR IF NO BUDGET CHANGES MADE		YOUR TAX RATE AND TAXES THIS YEAR IF PROPOSED BUDGET CHANGE IS MADE	
	COLUMN 1	COLUMN 2 RATE	COLUMN 3 TAXES	COLUMN 4	COLUMN 5 RATE	COLUMN 6 TAXES	COLUMN 7 RATE	COLUMN 8 TAXES
County								
General Fund	189,343	3.4604	655.20	208,277	3.2862	684.44	3.4604	720.72
Municipal Svcs	189,343	1.0733	203.22	208,277	1.0231	213.09	1.0733	223.54
Emergency Svcs Dist	189,343	2.3655	447.89	208,277	2.2466	467.92	2.3655	492.68
Land Acquis Bond	189,343	0.2955	55.95	208,277	0.2763	57.55	0.2827	58.88
School								
By Local Board	214,200	2.7480	588.62	214,200	2.6148	560.09	2.7480	588.62
By State Law	214,200	4.3050	922.13	214,200	4.0963	877.43	4.0450	866.44
Water Management District								
St. John's Riv Dist	189,343	0.2724	51.58	208,277	0.2562	53.36	0.2562	53.36
Independent Special District								
Florida Inland Nav	189,343	0.0320	6.06	208,277	0.0302	6.29	0.0320	6.66
Hospital Dist	189,343	0.8894	168.40	208,277	0.8447	175.93	0.9405	195.88
Mosquito Control	189,343	0.2515	47.62	208,277	0.2389	49.76	0.2600	54.15
Sebastian Inlet	189,343	0.0937	17.74	208,277	0.0877	18.27	0.0877	18.27
TOTAL AD VALOREM PROPERTY TAXES			3,164.41			3,164.13		3,279.20
TOTAL AD VALOREM PROPERTY TAXES			3,164.41			3,164.13		3,279.20
TOTAL NON-AD VALOREM PROPERTY TAXES			0.00			0.00		0.00
TOTAL TAXES			3,164.41			3,164.13		3,279.20

Lot #30: 9265 E. Marsh Island Drive

2018 TRIM Notice

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DAVID C. NOLTE, CFA, ASA
INDIAN RIVER COUNTY PROPERTY APPRAISER

NOTICE OF PROPOSED PROPERTY TAXES AND
PROPOSED OR ADOPTED NON-AD VALOREM
ASSESSMENTS INDIAN RIVER COUNTY TAXING
AUTHORITIES

Tax Code: 1

Site Address:
9265 E MARSH ISLAND DR VERO
BEACH, FL 32963

Prop ID: 38676

Geo ID: 3139270000500000030.0

Legal Description of Property:
MARSH ISLAND PD - LOT 30 PBI
16-71

TAXING AUTHORITY TAX INFORMATION								
TAXING AUTHORITY	PRIOR (2017) TAXABLE VALUE	YOUR FINAL TAX RATE AND TAXES LAST YEAR (2017)		CURRENT (2018) TAXABLE VALUE	YOUR TAX RATE AND TAXES THIS YEAR IF NO BUDGET CHANGES MADE		YOUR TAX RATE AND TAXES THIS YEAR IF PROPOSED BUDGET CHANGE IS MADE	
	COLUMN 1	COLUMN 2 RATE	COLUMN 3 TAXES	COLUMN 4	COLUMN 5 RATE	COLUMN 6 TAXES	COLUMN 7 RATE	COLUMN 8 TAXES
County								
General Fund	136,000	3.4604	470.61	119,000	3.2862	391.06	3.4604	411.79
Municipal Svcs	136,000	1.0733	145.97	119,000	1.0231	121.75	1.0733	127.72
Emergency Svs Dist	136,000	2.3655	321.71	119,000	2.2466	267.35	2.3655	281.49
Land Acquis Bond	136,000	0.2955	40.19	119,000	0.2763	32.88	0.2827	33.64
School								
By Local Board	136,000	2.7480	373.73	119,000	2.6148	311.16	2.7480	327.01
By State Law	136,000	4.3050	585.48	118,000	4.0963	487.46	4.0450	481.36
Water Management District								
St. John's Riv Dist	136,000	0.2724	37.05	119,000	0.2562	30.49	0.2562	30.49
Independent Special District								
Florida Inland Nav	136,000	0.0320	4.35	119,000	0.0302	3.59	0.0320	3.81
Hospital Dist	136,000	0.8894	120.96	119,000	0.8447	100.52	0.9405	111.92
Mosquito Control	136,000	0.2515	34.20	119,000	0.2389	28.43	0.2600	30.94
Sebastian Inlet	136,000	0.0937	12.74	119,000	0.0877	10.44	0.0877	10.44
TOTAL AD VALOREM PROPERTY TAXES			2,146.99			1,785.13		1,850.61
TOTAL AD VALOREM PROPERTY TAXES			2,146.99			1,785.13		1,850.61
TOTAL NON-AD VALOREM PROPERTY TAXES			0.00			0.00		0.00
TOTAL TAXES			2,146.99			1,785.13		1,850.61

Lot #15: 9250 E. Marsh Island Drive

2018 TRIM Notice

**DO NOT PAY
THIS IS NOT A BILL**

DAVID C. NOLTE, CFA, ASA
INDIAN RIVER COUNTY PROPERTY APPRAISER

NOTICE OF PROPOSED PROPERTY TAXES AND
PROPOSED OR ADOPTED NON-AD VALOREM
ASSESSMENTS INDIAN RIVER COUNTY TAXING
AUTHORITIES

Tax Code: 1

Site Address:
9250 E MARSH ISLAND DR VERO
BEACH, FL 32963

Prop ID: 38661

Geo ID: 31392700005000000015.0

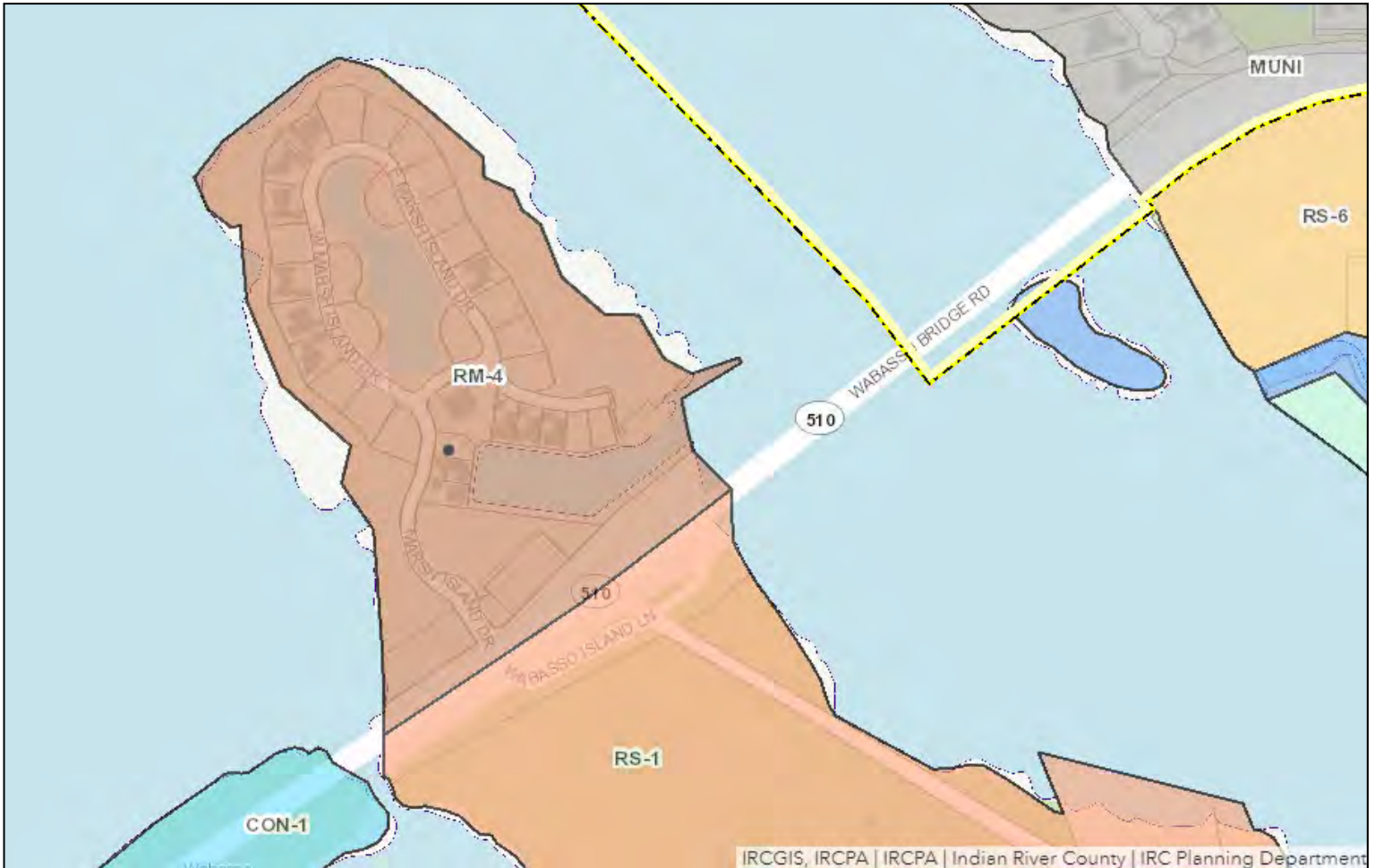
Legal Description of Property:
MARSH ISLAND PD - LOT 15 PBI
16-71

TAXING AUTHORITY TAX INFORMATION								
TAXING AUTHORITY	PRIOR (2017) TAXABLE VALUE	YOUR FINAL TAX RATE AND TAXES LAST YEAR (2017)		CURRENT (2018) TAXABLE VALUE	YOUR TAX RATE AND TAXES THIS YEAR IF NO BUDGET CHANGES MADE		YOUR TAX RATE AND TAXES THIS YEAR IF PROPOSED BUDGET CHANGE IS MADE	
	COLUMN 1	COLUMN 2 RATE	COLUMN 3 TAXES	COLUMN 4	COLUMN 5 RATE	COLUMN 6 TAXES	COLUMN 7 RATE	COLUMN 8 TAXES
County								
General Fund	394,405	3.4604	1,364.80	394,405	3.2862	1,296.09	3.4604	1,364.80
Municipal Svcs	394,405	1.0733	423.31	394,405	1.0231	403.52	1.0733	423.31
Emergency Svcs Dist	394,405	2.3655	932.97	394,405	2.2466	886.07	2.3655	932.97
Land Acquis Bond	394,405	0.2955	116.55	394,405	0.2763	108.97	0.2827	111.50
School								
By Local Board	394,405	2.7480	1,083.82	394,405	2.6148	1,031.29	2.7480	1,083.82
By State Law	394,405	4.3050	1,697.91	394,405	4.0963	1,615.60	4.0450	1,595.37
Water Management District								
St.John's Riv Dist	394,405	0.2724	107.44	394,405	0.2562	101.05	0.2562	101.05
Independent Special District								
Florida Inland Nav	394,405	0.0320	12.62	394,405	0.0302	11.91	0.0320	12.62
Hospital Dist	394,405	0.8894	350.78	394,405	0.8447	333.15	0.9405	370.94
Mosquito Control	394,405	0.2515	99.19	394,405	0.2389	94.22	0.2600	102.55
Sebastian Inlet	394,405	0.0937	36.96	394,405	0.0877	34.59	0.0877	34.59
TOTAL AD VALOREM PROPERTY TAXES			6,226.35			5,916.46		6,133.52
TOTAL AD VALOREM PROPERTY TAXES			6,226.35			5,916.46		6,133.52
TOTAL NON-AD VALOREM PROPERTY TAXES			0.00			0.00		0.00
TOTAL TAXES			6,226.35			5,916.46		6,133.52

PROPERTY SPECIFICATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

ZONING



Source: <http://ircgov.maps.arcgis.com/apps/webappviewer/index.html?id=dc79dbd5c0f645ae92603ce6eaeef148d>

RM-4

Multiple-Family Residential District

For the Complete County Code of Ordinances Visit:

https://library.municode.com/fl/indian_river_county/codes/code_of_ordinances



Section 911.08. - Multiple-family residential districts.

(1) *Purpose and intent.* The multiple-family districts are established to implement the policies of the Indian River County Comprehensive Plan for managing land designated for residential uses, providing opportunities for multifamily residential units and ensuring adequate public facilities to meet the needs of residents. These districts are also intended to implement the county's housing policies by providing opportunities for a varied and diverse housing supply.

(2) *Districts established.* The following districts are established to implement the provisions of this chapter:

RM-3

RM-4

RM-6

RM-8

RM-10

(3) *Relationship to land use map.* Multiple-family districts may be established in the following land use designations:

Zoning District	Land Use Designations				REC
	L-1	L-2	M-1	M-2	
RM-3	X	X	-	-	X
RM-4	-	X	-	-	X
RM-6	-	X	X	X	X
RM-8	-	-	X	X	X
RM-10	-	-	-	X	X

X

- District permitted

-

- District not permitted

(4) *Uses.* Uses in the multiple-family districts are classified as permitted uses, administrative permit uses, and special exception uses. Site plan review shall be required for the construction, alteration and use of all structures and buildings except single-family dwellings.

	District
--	----------

Uses	RM-3	RM-4	RM-6	RM-8	RM-10
<i>Agricultural</i>					
Noncommercial nurseries and greenhouses	A	A	A	A	A
Noncommercial stables	A	A	A	A	A
<i>Residential</i>					
Accessory single-family dwelling unit	A	A	A	A	A
Small lot single-family subdivision	-	-	A	A	A
Single-family dwellings	P	P	P	P	P
SF dwelling (attached)	P	P	P	P	P
Duplex	P	P	P	P	P
Multifamily dwellings	P	P	P	P	P
Single-family docks and private observation/fishing piers on vacant lots	A	A	A	A	A
Uses	RM-3	RM-4	RM-6	RM-8	RM-10
Bed and breakfasts	S	S	S	A	A
Residential resort	-	-	S	S	S

Guest cottage and servant's quarters	A	A	A	A	A
Small-scale Traditional Neighborhood Design (TND)	A	A	A	A	A
<i>Institutional</i>					
Child or adult care facilities	S	S	S	A	A
Foster care facilities	P	P	P	P	P
Group home (level I)	A	A	A	P	P
Adult congregate living facility (8 residents maximum)	A	A	A	P	P
Group home (level II & III)	S	S	S	A	A
Adult congregate living facility (20 residents maximum)	S	S	S	A	A
Group homes (residential centers)	S	S	S	S	S
Adult congregate living facility (21+ residents)	S	S	S	S	S

Residential treatment centers	-	-	-	S	S
Total care facilities	-	-	-	S	S
Places of worship	S	S	S	A	A
Cemeteries	S	S	S	S	S
<i>Community Service</i>					
Cultural and civic facilities	-	-	-	S	S
Emergency services	P	P	P	P	P
Schools, primary and secondary	S	S	S	S	S
Colleges and universities	S	S	S	S	S
Libraries	S	S	S	S	S
Community centers	S	S	S	A	A
Government administrative buildings	S	S	S	S	S
Civic and social membership organizations	-	-	-	S	S
<i>Recreation</i>					
Beach clubs	S	S	S	S	S
Country clubs	S	S	S	S	S

Golf courses	S	S	S	S	S
Public parks and playgrounds	A	A	A	A	A
Tennis facilities	S	S	S	S	S
Yacht clubs	S	S	S	S	S
Health and fitness clubs	S	S	A	A	A
Public/private docks	S	S	S	S	S
<i>Utility</i>					
Communications towers (wireless facilities including cell towers)	A ¹	A ¹	A ¹	A ¹	A ¹
Communications towers (non-wireless facilities including TV and radio broadcast towers)					
Amateur radio (accessory use)					
Less than 80 feet	P	P	P	P	P
80 feet or taller (see 971.44(4) for special criteria)	S	S	S	S	S
Commercial					

Up to 70 feet:					
Camouflaged	P	P	P	P	P
Non-camouflaged	-	-	-	-	-
70 feet to 150 feet:					
Camouflaged	A	A	A	A	A
Monopole (minimum of 2 users)	-	-	-	-	-
Not camouflaged and not monopole	-	-	-	-	-
Over 150 feet:					
All tower types (see 971.44(1) for special criteria)	-	-	-	-	-
Limited public and private utilities	S	S	S	S	S
Public and private utilities heavy	S	S	S	S	S

P - Permitted use

A - Administrative permit use

S - Special exception use

¹ For wireless commercial facilities regulations, see subsection 971.44(5), Section 4 use table.

(5) *Accessory uses and structures* as provided in Chapter 917.

(6) *Required improvements*. All future subdivisions and site plans for development in multiple-family districts shall install the following improvements, designed and constructed to meet the requirements and specifications of the Code of Laws and Ordinances of Indian River County and the State of Florida.

	District				
	RM-3	RM-4	RM-6	RM-8	RM-10
Bikeways	X	X	X	X	X
Sidewalks	X	X	X	X	X
Streetlights	X	X	X	X	X
Curbs	X	X	X	X	X
Green Space/Recreation Space	X	X	X	X	X
Storm Water Management	X	X	X	X	X
Dedication of Rights-of-Way	X	X	X	X	X

A. *Bikeways*. The project developer shall be responsible for providing a bikeway(s) along the project site's frontage on all rights-of-way or easements if such bikeway facility is designated in the Indian River County Comprehensive Bikeway and Sidewalk Plan.

B. *Sidewalks*: The project developer shall be responsible for providing a sidewalk(s) along the project site's frontage on all rights-of-way (existing or created via the project plat) and/or street easements (existing or created via the project plat) if such sidewalk facility is designated in the Indian River County Comprehensive Bikeway and Sidewalk Plan or required in the site's applicable zoning district. Five-foot wide sidewalks shall also be required on both sides of all interior streets within rights-of-way and/or easements (existing or created via the project plat). A minimum six-foot strip of irrigated, approved ground cover or sodded landscape area shall be provided between the curb and the sidewalk with canopy trees provided every fifty (50) feet.

*C. *Curbs*: Curbing, or other barrier approved by the county engineer, is required to be installed between all sidewalks and adjacent interior roadways and parking areas.

- *D. *Green space and/or recreation space:* All multi-family developments must set aside a minimum of seven and one-half percent of the total project site area as dedicated to green space and/or recreation space. Upland preserve, riparian, and created littoral zones may be credited toward this requirement. Recreation tracts shall be located, designed, constructed, maintained and operated in such a manner that minimizes adverse noise and lighting impacts on nearby developments. For purposes of this regulation, "recreation space" may include recreational facilities such as parks, ball courts, and pools. Common spaces credited toward meeting this requirement shall be located and designed to be conveniently accessible to all project residents, and shall be sized, located, and designed to provide a project amenity such as a park, conservation area, open air recreation facility, or other similar type of amenity.
1. Recreation tracts located within one hundred twenty-five (125) feet of the boundary of the development shall be either:
 - a. Designated on a final plat, or other document recorded in the public records, as being used for passive recreation uses: no active uses, such as but not limited to basketball or tennis courts, shall be permitted on these tracts.
 - b. Buffered from adjacent development boundaries with a minimum twenty-five (25) foot wide Type B (or better) buffer with a six-foot opaque feature (see [Chapter 926](#)).
 2. Any and all lighting used within recreation tracts shall be approved by the county and shall be adequately shielded to prevent lighting or glare from encroaching on to properties adjacent to or nearby the development.
- *E. *Stormwater management:* Open swales along the sides of internal project streets are not permitted. A stormwater management system shall be constructed in accordance with the requirements of [Chapter 930](#). Stormwater shall be retained in a lake for all multi-family developments. Drainage swales shall be permitted only for conveyance purposes and not for capacity calculations. Dry detention may be used only in circumstances where retention in a lake conflicts with the aquifer recharge criteria, where existing trees and vegetation can be preserved in and around a dry detention area, or where approved by the public works director if warranted by soils or other site characteristics in accordance with [Chapter 930](#) provisions and regulations.
- *F. *Dedication of rights-of-way:* All right-of-way areas set aside for future roadway improvements shall be landscaped, and irrigated to the edge of the paved roadway by the developer and/or homeowner's associations. Maintenance of the right-of-way areas shall be the responsibility of the developer and/or homeowner's association.
- *G. *Internal pedestrian systems:* Within projects an internal pedestrian system shall be provided which connects to the off-site public sidewalk/pedestrian system. The internal system shall provide five-foot wide sidewalks, or other surface approved by the county engineer, which serve each unit and internal recreation and amenity area.
- * *NOTE:* The requirements of items C, D, E, F, and G shall not apply to legally established individual lots and parcels of record upon which no more than three (3) residential units are proposed.

(7) *Size and dimension criteria:*

Regulation	Unit	RM-3	RM-4	RM-6	RM-8	RM-10
Maximum density	d.u./gr.ac.	3	4	6	8	10

Minimum lot size						
SF	sq. feet	12,000	10,000	7,000	7,000	7,000
MF and Duplex		24,000	20,000	12,000	10,000	10,000
Minimum lot width	feet	80	80	70	70	70
Minimum yard	feet					
Front		25 ²	25 ²	25 ²	25	25 ²
Side		10 ²	10 ²	10 ²	10 ²	10 ²
Rear		25 ²	25 ²	25 ²	25 ²	25 ²
Maximum building height	feet	35	35	35	35	35
Maximum building coverage ³	percent of lot					
SF		30	30	30/40	30/40	30/40
MF/Duplex		25	25	25	25	25
Minimum open space	percent of lot	40	40	40	30	30

¹ In no case shall maximum density be exceeded

² One (1) foot additional yard for each two (2) feet in height over twenty-five (25) feet in building height shall apply. Also, the RS-6 yard requirements shall apply to RM-3, RM-4, RM-6 RM-8, and RM-10 zoned nonconforming lots of record lawfully created prior to June 18, 1991.

³ Maximum building coverage for single-story detached single-family homes in RM-6, RM-8, and RM-10 is forty (40) percent. For purposes of this regulation, single-story homes shall not include any habitable floor area situated more than three (3) feet above the main ground floor elevation. Maximum building coverage for all other types of buildings in RM-6, RM-8, and RM-10 is thirty (30) percent.

Maximum FAR (Floor Area Ratio):

- Retail trade 0.23 FAR
 - Office, business/personal services, recreational, schools, institutional 0.35 FAR
 - Industrial, storage, wholesale/distribution, utilities, heavy repair 0.50 FAR
- (8) *Required buffer yards:* Where a multi-family project in the RM-6, RM-8 or RM-10 district directly adjoins a single-family zoning district, buffer yards shall be provided along the boundary between the multifamily project and the single-family zoning district. Buffer yards shall be located in common areas or separate buffer tracts, and are required along rear/side property lines, measured at right angles to lot lines, as follows:

Multifamily District	Buffer Type
RM-6	C—3 ft. Opaque
RM-8	C—3 ft. Opaque
RM-10	C—3 ft. Opaque

- a. Wall variation. Subdivision ordinance [section 913.09\(9\)\(c\)](#), design requirements for walls along roadways, shall apply in multi-family projects where walls are proposed along roadways.

(Ord. No. 90-16, § 1, 9-11-90; Ord. No. 91-7, § 33, 2-27-91; Ord. No. 91-48, § 17, 12-4-91; Ord. No. 92-39, § 12, 9-29-92; Ord. No. 93-8 §§ 2, 12, 24, 3-18-93; Ord. No. 93-29, § 5B, 9-7-93; Ord. No. 94-1, §§ 2D, 4C, 6C, 1-5-94; Ord. No. 94-25, §§ 8, 22, 8-31-94; Ord. No. 96-5, § 1(C), 2-27-96; Ord. No. 97-16, § 3(3), 5-6-97; Ord. No. 98-9, § 9, 5-19-98; Ord. No. 2000-004, § 2C, 2-15-00; Ord. No. 2000-038, § 1B, 11-21-00; Ord. No. 2002-016, § 1C, 4-2-02; Ord. No. 2002-031, § 1C, 11-12-02; Ord. No. 2006-014, § 1, 5-16-06; Ord. No. 2007-012, § 1, 3-20-07; Ord. No. 2010-001, § 2, 1-5-10; Ord. No. 2012-016, §§ 4, 6, 7C, 7-10-12)

ADDENDUM A: CONTRACT OF SALE

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL

This Section Includes:

- Agency Disclosure
- Contract of Sale



AGENCY DISCLOSURE

Max Spann Real Estate and Auction Company is by this document giving notice to the Purchaser(s) that it is the Agent and Representative of the Sellers.

The undersigned(s) acknowledge(s) that this written notice was received before the undersigned(s) signed a contractual offer or lease agreement in compliance with 475.25(1) (q), Florida Statutes, and Rule 21V-10-033 Florida Administrative Code.

Date

Signature of Purchaser

Date

Signature of Purchaser

2) RADON GAS --NOTICE TO PROSPECTIVE PURCHASER

Radon is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit. Pursuant to 404-056(8), Florida Statutes.

3) COMPENSATION

The Purchaser acknowledges that Max Spann Real Estate and Auction Company is being paid by the Seller, Pursuant to Rule 2-13.003(2), Florida Administrative Code.

4) NO BROKERAGE RELATIONSHIP

FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE THEIR DUTIES TO SELLERS AND BUYERS.

As a real estate licensee who has no brokerage relationship with you, Max Spann Real Estate and Auction Company and its Associates owe to you the following duties:

1. Dealing honestly and fairly.
2. Disclosing all known facts that materially affect the value of residential real property which are not readily observable to the buyer.
3. Accounting for all funds entrusted to the licensee.

Date

Signature

Date

Signature

“AS IS” CONTRACT FOR SALE AND PURCHASE

_____, whose address is _____, hereinafter referred to as the “Seller”, and _____ Buyer whose address is _____, hereinafter referred to as “Buyer” agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively “Property”) pursuant to the terms and conditions of this “AS IS” Contract for Sale and Purchase (“Contract”):

1. PROPERTY DESCRIPTION:

(a) Street address, city, zip: _____ Marsh Island Drive Vero Beach, Florida 32963

(b) Located in Indian River County, Florida. Property Tax ID # _____

(c) Real Property: The legal description is Property ID _____

Lot ___ PBI _____ according to the public records of Indian River County, Florida

2. PURCHASE PRICE: (U.S. currency)

(a) Bid Price \$ _____

(b) Buyers Premium (10% of Bid Price) \$ _____

A Buyer’s Premium equal to 10% of purchase price payable by the Buyer shall be added to the winning bid to determine the final selling price.

(c) Total Purchase Price (not including Buyer’s closing costs, prepaids and prorations) \$ _____

3. PAYMENT OF PURCHASE PRICE: The Buyer shall pay the purchase price as follows:

Initial deposit in the form of a certified check, bank cashier’s check or other check approved in advance by Max Spann Real Estate & Auction Company and payable to Max Spann Real Estate and Auction Company as (“Escrow Agent”) upon signing of contract.

\$ _____

Balance to be paid at closing (not including closing costs, prepaids and prorations) by wire transfer or other COLLECTED Funds.

\$ _____

“COLLECTED” or “COLLECTION of” funds means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent’s account.

Total

\$ _____

4. **EFFECTIVE DATE:** The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed this Contract.
5. **NO FINANCING:** Buyer will pay cash for the purchase of the Property at Closing. There is no financing contingency to Buyer’s obligation to close. If Buyer obtains a loan for any part of the Purchase Price of the Property, Buyer acknowledges that any terms and conditions imposed by Buyer’s lender(s) or by Consumer Financial Protection Bureau Closing Disclosure deliver requirements (“CFPB Requirements”) shall not affect or extend the Buyer’s obligation to close or otherwise affect any terms or conditions of this Contract.
6. **CLOSING AGENT:** Oceanside Title & Escrow, Inc. shall serve and act as Closing Agent and will issue title insurance policies required pursuant to the provisions of paragraph 12.
7. **CLOSING DATE:** Unless modified by other provision of this Contract, the closing of this transaction shall occur and the closing documents and COLLECTED funds required to be furnished by each party pursuant to this Contract shall be delivered (“Closing”) on _____ (“Closing Date”), at the time established by the Closing Agent on or about 30 days following execution of this agreement.
8. **EXTENSION OF CLOSING DATE:** If an event constituting “Force Majeure” causes services essential for Closing to be unavailable, including the unavailability of utilities or issuance of hazard, wind, flood or homeowners’ insurance, the Closing Date shall be extended for a reasonable time up to seven (7) days after the Force Majeure no longer prevents performance under this Contract. “Force Majeure” means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome.
9. **CLOSING COSTS:** All closing costs shall be paid by Buyer. Closing costs shall include:
 - Documentary stamp taxes, and recording fees for the deed
 - Owner’s Policy and Charges

- Title Search Charges
- Municipal Lien search
- HOA Association estoppel fees
- HOA application/transfer fees
- Taxes and recording fees on any notes and mortgages
- Lender's Title policy and endorsements
- Appraisal fee
- Buyer's Inspections
- Survey

10. CLOSING LOCATION; DOCUMENTS AND PROCEDURE:

- (I) **LOCATION:** Closing will be conducted by the Closing Agent at its office of Oceanside Title & Escrow, Inc. 3501 Ocean Drive Vero Beach, Florida 32963 or at such other locations as Buyer and Seller may agree.
- (II) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property and all other documents reasonable and customary to effectuate a Closing and for Seller's Title Company to be able to issue the title policy to Buyer. Buyer shall at or prior to Closing, execute and deliver, as applicable all documents reasonable and customary to effectuate a Closing. At the Closing, Buyer and Seller shall execute a Closing Statement in customary form.
- (III) **PROCEDURE:** The deed shall be delivered and recorded upon receipt of COLLECTION of all closing funds and Closing Agent shall, subject to the COLLECTION of all closing funds, disburse at Closing the brokerage fees due to Broker and the net sale proceeds to Seller.
- 11. CONVEYANCE:** At Closing, Seller shall convey marketable title to the Real Property by warranty deed except for the following "Permitted Exceptions": (a) taxes and assessments for the year of Closing and all Subsequent years, (b) general utility and right-of-way easements serving Seller's Property, (c) comprehensive land use plans, zoning, and other land use prohibitions imposed by governmental authority, (d) matters appearing on any plat or otherwise common to the subdivision, and (e) such other matters appearing in the public records of Indian River County, Florida affecting Seller's Property which do not render the title thereto unmarketable.
- 12. TITLE INSURANCE:** Within fifteen(15) days after the Effective Date of this Contract, Seller will provide to Buyer a title commitment covering the Seller's Property ("Seller's Commitment") issued by "Closing Agent" from a Florida licensed title insurer issued to Buyer in the amount of the Purchase Price. Buyer shall have the right to obtain a survey at Buyer's expense. If the Buyer does not obtain the applicable survey and submit it to the title company within the time appropriate to the title company prior to the closing date hereof, Buyer agrees to take title subject to the survey exception set forth in the Title Report.

Within five (5) business days after receipt of the Seller's Commitment by Buyer ("Title Review Period") Buyer shall notify Seller in writing ("Title Objection Notice") of any matters unacceptable to Buyer affecting the Seller's Property, excluding the Permitted Exceptions ("Title Defects"). Upon receipt of the Title Objection Notice, Seller shall use its good faith efforts to cure such Title defects within thirty (30) days of receipt of the Title Objection Notice ("Title Cure Date"). In the event that Seller is unable to cure the Title Defects prior to the Title Cure Date; Seller shall notify Buyer in writing as to which Title Defects remain uncured and Buyer, at Buyer's option, may: (i) elect to accept title to the Seller's Property subject to the Title Defects (in which event the remaining Title Defects shall be deemed Permitted Exceptions, without offset or deduction against the Purchase Price; or (ii) terminate this Contract by written notice thereof to Seller, whereupon this Contract shall be terminated, and both parties shall thereafter be released from all further obligations hereunder, other than those matters which expressly survive the termination hereof.

13. **CONDITION OF THE PROPERTY:** This Property is being sold "AS IS". BUYER ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY IN "AS IS" AND "WHERE IS" CONDITION, WITH ANY AND ALL FAULTS AND DEFECTS, WHETHER LATENT OR PATENT, AND SUBJECT TO ORDINARY WEAR AND TEAR FROM THE DATE HEREOF THROUGH THE CLOSING DATE. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING UPON, AND THAT SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, PROMISES, BROKER'S "SET-UPS", STATEMENTS, REPRESENTATIONS OR INFORMATION REGARDING THE PROPERTY' PHYSICAL OR ENVIRONMENTAL CONDITION, INCOME, EXPENSES, OPERATION, USE, COMPLIANCE WITH LAWS, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS MAY BE SPECIFICALLY SET FORTH IN THIS CONTRACT. Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions or requirements. The Seller, Max Spann Real Estate & Auction Company, or anyone on behalf of the Seller or the Max Spann Real Estate & Auction Company, does not make any claims or promises about the condition, zoning or uses, or value of any of the Property included in this sale. The Buyer acknowledges and agrees that it has inspected the Property or Buyer hereby waives such right to inspect the Property. **THERE IS NO INSPECTION PERIOD IN WHICH BUYER MAY CANCEL THIS CONTRACT.** Buyer acknowledges that it has not relied upon any representations made by Seller concerning the condition of the Property in entering into this Contract. Buyer waives any claims for any hidden defects, whether known or unknown, whether physical or intangible, whether such defects or conditions were discoverable through inspection or not.
14. **HOMEOWNERS ASSOCIATION:** This Property is part of a homeowner association that has the ability to impose fees, charges or assessments on the Property or to impose rules or regulations applicable to the Property (an "Association"), unless otherwise specifically required by applicable law. Buyer acknowledges that Buyer, at Buyer's sole expense, was and is responsible for obtaining, reviewing and complying with any declaration of covenants, conditions, restrictions, rules, bylaws, articles of incorporation and/or other governing documentation of such Association. Seller makes no representation or warranty of any kind with respect to any of the foregoing, including, without limitation,

whether the Property is subject to or part of any Association, and, if subject to or part of an Association, whether the Property is in compliance with the covenants, conditions and restrictions, rules, bylaws, articles of incorporation and/or other governing documents of the Association. Buyer hereby waives any and all rights Buyer has or may have, pursuant to applicable law or otherwise, to require Seller to either provide to Buyer, or authorize any Association to provide to Buyer, copies of any documentation related to said Association, including, without limitation, any governing or financial documents or records of assessments or fees for the Property. Buyer agrees to make any required application with the Association when executing contract of sale along with a check for \$100 made payable to Marsh Island HOA.

15. **RISK OF LOSS:** If after Effective Date, but before Closing, Property is damaged by fire or other casualty (“Casualty Loss”) and cost of restoration exceeds 1.5% of the Purchase Prices, then Seller may elect to either repair the damage, provide an appropriate credit at closing, or terminate this Contract.
16. **POSSESSION:** At Closing Seller shall deliver possession of the Property to Buyer.
17. **PRORATION; CREDITS:** Taxes, assessments and other related costs for the year of the Closing shall be prorated between Buyer and Seller as of the date of the Closing. Taxes will be prorated on the current year's tax. The proration will make appropriate allowance for the maximum allowable discount and for other exemptions if allowed for the current year. This Contract shall survive the Closing. Unless otherwise provided herein, certified, confirmed and ratified special assessment liens as of the Effective Date are to be paid by Seller. Pending liens as of the Effective Date of this Contract shall be assumed by the Buyer.
18. **ASSIGNABILITY:** This contract is binding upon all parties who sign it. Neither this Contract, nor any right or rights under this Contract, shall be assigned by the Buyer without the prior written consent of the Seller. Any assignment made in violation of these provisions shall be null and void.
19. **DEFAULT:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.
20. **NOTICES.** All notices under this contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this contract or to that party's attorney. Notice shall be deemed delivered upon the earlier of actual notice or three (3) business days after placing such notice in the mail.

21. **BROKERAGE.** Seller has agreed to pay to Max Spann Auction Real Estate & Auction Company (“Broker”) a commission pursuant to a separate commission Contract. Max Spann Real Estate & Auction Company shall be responsible for any commission to be paid to other brokers, but only as by prior written Contract executed by Max Spann Real Estate & Auction Company. No other commission is to be paid. Buyer hereby indemnifies and holds Seller harmless from and against any cost (regardless of whether it would be considered a taxable cost), fees, damages, claims, and liabilities, including but not limited to reasonable attorney’s fees (incurred prior to litigation, during litigation, including trial and appellate levels, and in seeking to recover fees) arising out of any claim or demand or threats of claim made by any broker or salesman or finder by reason of its relationship with Buyer or its representatives, employees or agents. This provision shall survive Closing or early termination of this Contract.
22. **ATTORNEY’S FEES:** In the event it becomes necessary for either party to enforce the terms of this Contract, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs, regardless of whether the costs would be otherwise taxable, through all trial, appellate and post-judgment proceedings.
23. **N/A**
24. **PROPERTY TAX DISCLOSURE SUMMARY:** Buyer should not rely on Seller’s current property taxes and assessments as the amount of property taxes and/or assessments that Buyer may be obligated to pay in any year subsequent to purchase. A change of ownership, use, or property improvements may trigger reassessments of the Property that could result in higher property taxes and/or assessments. In addition, property taxes and/or assessments may increase for other reasons, including tax rate increases and imposition of new taxes and assessments. The Property may also be subject to one or more special assessment liens or charges imposed by a public body payable in installments which will continue after Closing, for which Buyer shall be solely responsible after Closing. If Buyer has any questions concerning valuation or property taxes and assessments, Buyer is advised to contact the applicable county property appraiser’s office for information.
25. **NO RECORDING:** No party hereto shall record this Contract or any memorandum of its terms and each hereby indemnifies and holds the other harmless for all loss, cost or expense, including, but not limited to, attorneys’ fees and court costs through all trial, appellate and post-judgment proceedings as the result of a breach of the provisions of this Paragraph. The provisions of this Paragraph shall survive the Closing or earlier termination of this Contract.
26. **TIME IS OF THE ESSENCE:** For purposes herein, Buyer and Seller agree that time shall be of the essence of this Contract.
27. **NO WAIVER:** No waiver of any provision of this Contract shall be effective unless it is in writing, signed by the party against whom it is asserted and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
28. **COUNTERPARTS; ELECTRONIC SIGNATURES:** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which

shall constitute one and the same Contract. This Contract may be executed through the use of electronic signatures.

29. **FURTHER ASSURANCES:** Each party, upon demand and at party's own cost, will execute and deliver any and all written further assurances that are necessary, convenient, or desirable to evidence, complete or perfect the transactions contemplated by this Contract, so long as no further assurance operates to impose any new or additional liability upon any party. The parties will so perform all other acts that are necessary, convenient, or desirable for any such purpose, so long as no new or additional liabilities are incurred.
30. **BINDING EFFECT:** This Contract shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns (where assignment is not restricted).
31. **GOVERNING LAW:** This Contract shall be construed and interpreted according to the laws of the State of Florida and venue with respect to any litigation shall be exclusively in Indian River County, Florida, unless another jurisdiction is required for equitable enforcement of any provision hereof. Buyer and Seller agree to personal jurisdiction in the State of Florida.
32. **ENTIRE AGREEMENT:** This Contract contains and sets forth the entire understanding between Seller and Buyer, and it shall not be changed, modified or amended except by an instrument in writing and executed by the party against whom the enforcement of any such change, modification or amendment is sought.
33. **RELATIONSHIP:** Nothing contained in this Contract shall constitute or be construed to be or create a partnership, joint venture or any other relationship between the Seller and Buyer other than the relationship of a buyer and seller of real and personal property as set forth in this Contract.
34. **CAPTIONS AND PARAGRAPH HEADINGS:** Captions and paragraph headings contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Contract, nor the intent of this Contract, nor the intent of any provision hereof.
35. **INTERPRETATION:** Buyer and Seller acknowledge that each party has reviewed this Contract and has had adequate opportunity to consult legal counsel with respect thereto and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments thereto.
36. **DECLARATION OF LICENSEE BUSINESS RELATIONSHIP(S):**
 - a. I, MAX SPANN, AS AN AUTHORIZED REPRESENTATIVE OF MAX SPANN REAL ESTATE & AUCTION COMPANY, AM WORKING IN THIS TRANSACTION AS A SELLER'S AGENT.

b. INFORMATION SUPPLIED BY _____
HAS INDICATED THAT IT IS OPERATING IN THIS TRANSACTION AS A
BUYER'S AGENT

37. **RELEASE.** Max Spann Real Estate & Auction Company is acting only as Auctioneer and Agents and shall no way be liable to the Buyer or Seller for the performance or non-performance of any of the foregoing conditions of sale. Buyer releases, quit claims and forever discharges Seller, Max Spann Real Estate & Auction Company, their LICENSEES, EMPLOYEES and any OFFICER or PARTNER of any one of them and any other PERSON, FIRM or CORPORATION who may be liable by or through them from any and all claims, losses or demands, including, but not limited to, personal injury and property damage and all of the consequences thereof, whether known or not, or any defects or conditions on the Property. Should Seller be in default under the terms of this Contract, or in violation of any seller disclosure law or regulation, this release does not deprive Buyer of any right to pursue any remedies that may be available under law or equity. This release will survive settlement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the parties hereto have duly executed this Contract the day and year set forth below:

SELLER:

_____ Date

BUYER:

_____ Date

Print Name: _____

_____ Date

Print Name: _____

ADDENDUM B: MARSH ISLAND
MASTER DECLARATION OF
COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



208.50 Rec
2.00 Misc.
46.00 copies
1.00 cert
8-13-2002

IN THE RECORDS OF
JEFFREY K. BARTON
CLERK CIRCUIT COURT
INDIAN RIVER CO., FLA.

COPY
MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESERVATIONS AND RESTRICTIONS

OF

MARSH ISLAND

COPY

COPY
This instrument prepared by:
Christopher H. Makine, Esquire
Gould, Cooksey, Fennell, O'Neil,
Makine, Carter & Hafner, P.A.
979 Beachland Boulevard
Vero Beach, Florida 32963

1337848

02 MAR 13 AM 9:38

OR 1473 PG 1773

**MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESERVATIONS AND RESTRICTIONS
OF
MARSH ISLAND**

COPY

THIS DECLARATION, made on the date hereinafter set forth by **MARSH ISLAND DEVELOPMENT COMPANY, L.L.C.**, a Florida limited liability company, its successors or assigns, hereinafter referred to as "**DEVELOPER**",

WITNESSETH THAT:

WHEREAS, Developer holds the fee simple title to the real property described in Article II of this Declaration and desires that there be created thereon a residential community to be known as Marsh Island; and

WHEREAS, Developer intends by this Declaration to impose upon the real property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners within the community. Developer desires to provide a flexible and reasonable procedure for the overall development of the real property, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the real property; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the powers of maintaining and administering the community properties and facilities including enforcing the covenants and restrictions and collecting and disbursing the charges and fees of property owners, and

WHEREAS, Developer has incorporated under the laws of the State of Florida, a non-profit corporation, known as **MARSH ISLAND HOMEOWNERS' ASSOCIATION, INC.**, for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, Developer hereby declares that all of the real property described in Article II shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the real property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof. This Declaration does not and is not intended to create a condominium within the meaning of the Florida Condominium Act, Florida Statutes Section 718.101, et seq.

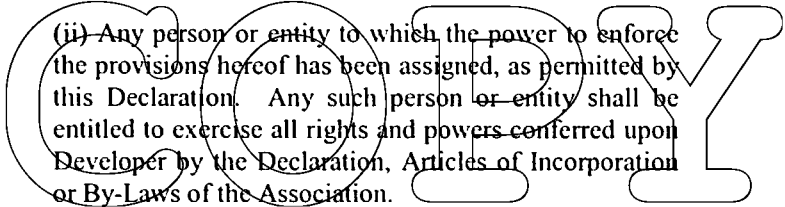
ARTICLE I
DEFINITIONS

Section 1. Glossary. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- A. **"Association"** shall mean and refer to the **MARSH ISLAND HOMEOWNERS' ASSOCIATION, INC.**
- B. **"The Properties"** shall mean and refer to all such real property as is subject to this Declaration.
- C. **"Common Expenses"** shall mean and refer to expenditures for services required and authorized to be performed by the Association.
- D. **"Common Properties"** shall mean and refer to any and all real property and personal property, or interest therein, whether improved or not that may, from time to time, be conveyed, leased or dedicated by Plat by the Developer or such other person in accordance with this Declaration to the Association and designated as Common Properties for the common use and enjoyment of the Owners.
- E. **"Lot"** shall mean and refer to any plot of land shown upon the recorded subdivision plat of the Properties with the exception of common properties as heretofore defined.
- F. **"Living Unit"** shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.
- G. **"Owner"** shall mean and refer to the record Owners, whether one or more persons or entities, of the fee simple title to a Lot in the subdivision, but not withstanding any applicable provision of any mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or deed in lieu of foreclosure.
- H. **"Member"** shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 1 hereof.
- I. **"Developer"** shall mean and refer to **MARSH ISLAND DEVELOPMENT COMPANY, L.L.C.**, a Florida limited liability company, or

(i) Any person or entity who succeeds to the title of Developer to all or a portion of the Properties by sale or assignment of all of the interest of the Developer in the properties, if the instrument of sale or assignment expressly so provides, or

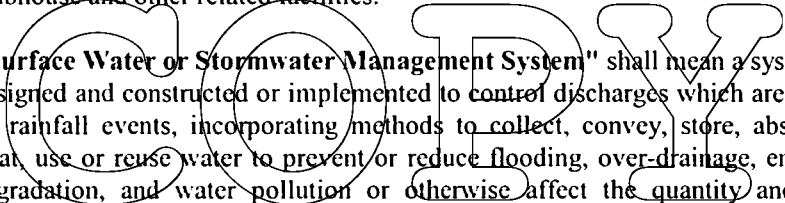
(ii) Any person or entity to which the power to enforce the provisions hereof has been assigned, as permitted by this Declaration. Any such person or entity shall be entitled to exercise all rights and powers conferred upon Developer by the Declaration, Articles of Incorporation or By-Laws of the Association.



J. **"Declaration"** shall mean and refer to this Master Declaration of Covenants, Conditions, Reservations and Restrictions applicable to the Properties, as recorded in the office of the Clerk of the Circuit Court of Indian River County, Florida.

K. **"Recreational Facility"** shall mean and refer to any Common Properties upon which Developer constructs certain recreational improvements which may include a clubhouse and other related facilities.

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



**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Indian River, Florida, and is more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE
MADE A PART HEREOF



**ARTICLE III
USE OF COMMON PROPERTIES**

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 6, every Member shall have a right and non-exclusive easement of use and enjoyment in and to the

Common Properties, and such right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

Section 2. Owners' Easements of Ingress and Egress. Each Owner shall have, as an appurtenance to his Lot, a perpetual, non-exclusive easement for ingress and egress to and from the Lot over and upon the Common Properties.

Section 3. Delegation of Use. Any Owner may delegate the right and easement granted to said Owner pursuant to this Article to the members of his family or his tenants who reside in his Living Unit but any such delegation shall be subject to and limited by the terms and conditions of this Declaration, the Articles and By-Laws of the Association and the Rules and Regulations of the Association.

Section 4. Restraint Upon Separation. The right and easement granted to an Owner pursuant to this Article are appurtenant to his Lot, shall not be separated therefrom and shall pass with the title to his Lot, whether or not separately described.

Section 5. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as the improvements thereon have been completed and until such times as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey the Common Properties of the development to the Association, free and clear of all liens and encumbrances, at such time as Class A members are in full control of the Association, or at an earlier date as determined by Developer.

Section 6. Extent of Members' Easements. The rights and easement of enjoyment created hereby shall be subject to the following:

- A. The Articles of Incorporation and By-Laws of the Association and any Rules and Regulations adopted by the Association, as the same may be altered or amended from time to time; and the dedications on the plat of Marsh Island.
- B. The right of the Association to suspend an Owner's voting rights and right to use the Recreational Facilities for any period during which any assessment of the Association against said Owner's Lot or Living Unit remains unpaid, and for any infraction of any Owner of the Association's rules and regulations for the duration of the infraction and for an additional period hereafter not to exceed thirty (30) days.
- C. The right of the Association to suspend a Member's enjoyment rights for any violation of the terms and conditions of this Declaration the Articles and By-Laws of the Association.
- D. The right of the Association to take such steps as are reasonably necessary to protect

the Common Properties against foreclosure; and

- E. The right of the Association to dedicate or transfer all or any of the Common Properties to any public agency, authority or utility, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective to and until approved by two-thirds (2/3) majority of all of the Members of the Association entitled to vote. Notice of any such meeting shall be given to every Member not less than ninety (90) days in advance of the meeting.

Section 7. Easement for Access and Drainage. The Association shall have a perpetual, non-exclusive easement over all areas of the surface water or stormwater management system for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter upon any portion of any Lot which is a part of the surface water or stormwater management system, at a reasonable time and in a reasonable manner, to operate, maintain or repair the surface water or stormwater management system as required by the St. Johns River Water Management District permit. Additionally, the Association shall have a perpetual, non-exclusive easement for drainage over the entire surface water or stormwater management system. No person shall alter the drainage flow of the surface water or stormwater management system, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity (including the Developer) who is a record Owner of a fee or undivided fee interest in any Lot which is subject to covenants of record to assessment by the Association shall be a member of the Association; provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and membership shall terminate simultaneously with any termination of ownership.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A: Class A members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each Lot which they hold the interests required for membership by Section 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot which is owned by more than one person.

Class B: The Class B member shall be Developer. The rights of the Class B member, including the right to approve actions taken under this Declaration and the By-Laws,

are specified elsewhere in the Declaration and the By-Laws. The Class B member shall be entitled to appoint the members of the Board of Directors during the Class "B" Control Period, as specified in Article IV of the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earliest of the following:

- A. ~~Three months after ninety (90%) percent of the lots permitted by Indian River County applicable to the Properties have been conveyed to Persons other than the Developer or builders holding title solely for purposes of development and sale; or~~
- B. ~~On December 31, 2012; or~~
- C. When, in its discretion, Developer so determines.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot in which it holds the interests required for membership under Section I.

ARTICLE V MAINTENANCE

Section 1. Common Properties. ~~The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Properties and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration.~~

The Association shall maintain and keep in good repair the Common Properties, such maintenance to be funded as hereinafter provided. This maintenance shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, including all private streets, medians, street lights, entry features and signage, and entry gates and gatehouses situated upon the Common Properties, Recreational Facilities (excluding marina), common buildings, play areas and pavilions situated upon the Common Properties.

Section 2. Wetland Areas. In connection with the development of Marsh Island, Developer has performed site mitigation composed of substantial removal of exotic species from wetlands within the riparian mangrove fringe areas of the Properties. These areas have been placed in conservation by the grant of appropriate conservation easements, which restrict the areas in perpetuity as provided in the form attached hereto as Exhibit "B", by this reference incorporated herein, and as set forth in Section 6 below.

In addition to initial mitigation activities, future monitoring and maintenance programs shall be undertaken by the Association to ensure control of exotic species and to enhance and preserve wetland areas, all as provided in the governing permits issued by the St. John's River Water Management District and the U.S. Army Corps of Engineers. The conservation areas shall constitute part of the Common Properties, and shall be preserved and maintained by the Association, as with other Common Properties.

Section 3. Assessments. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Properties shall be a Common Expense to be allocated among all members by assessments as hereinafter set forth.

Section 4. Additional Maintenance Functions. The Association may maintain other property which it does not own, (a) if such maintenance is required by this Declaration, or (b) if the Board of Directors determines that such maintenance is necessary or desirable.

Section 5. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the Common Properties. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances.

Section 6. Conservation Easements. Pursuant to the provisions of Section 704.06, Florida Statutes, Developer has granted to the St. Johns River Water Management District (the "District") a conservation easement in perpetuity over the property described in the Conservation Easement recorded on 3/13/2002 in Official Records Book 1473, Page 1765, public records of Indian River County, Florida. The Conservation Easement is attached hereto as Exhibit "B". Developer granted the Conservation Easement as a condition of permit number 4-061-65024-1 issued by the District, solely to offset adverse impacts to natural resources, fish and wildlife, and wetland functions.

- A. The purpose of the Conservation Easement is to assure that the Conservation Easement Areas will be retained forever in their existing natural condition and to prevent any use of the Conservation Easement Areas that will impair or interfere with the environmental value of these areas.
- B. Any activity in or use of the Conservation Easement Areas inconsistent with the purpose of the Conservation Easement is prohibited. The Conservation Easement expressly prohibits the following activities and uses:
- (i) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground; and

(ii) Dumping or placing soil or other substances or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials, and

(iii) Removing, destroying or trimming trees, shrubs, or other vegetation; and

(iv) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface; and

(v) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition; and

(vi) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation; and

(vii) Acts or uses detrimental to such retention of land or water areas; and

(viii) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

C. The Developer, its successors and assigns, are responsible for the periodic removal of trash and other debris which may accumulate in the Conservation Easement Areas.

D. To accomplish the purposes stated in the Conservation Easement, the Developer conveyed the following right to the District:

(i) To enter upon and inspect the Conservation Easement Areas in a reasonable manner and at reasonable times to determine if Developer or its successors and assigns are complying with the covenants and prohibitions contained in the Conservation Easement; and

(ii) to proceed at law or in equity to enforce the provisions of the Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and

require the restoration of areas or features of the Conservation Easement Areas that may be damaged by any activity inconsistent with the Conservation Easement.

- E. The provisions of the Conservation Easement may not be amended without the prior written approval of the District.

**ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or Living Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association: (1) annual assessments for Common Expenses; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made until paid. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person, persons or legal entity who was the Owner of such property at the time when the assessment became due and payable.

No Owner may waive or otherwise exempt itself from liability for the assessments provided for herein, including by way of illustration and not limitation, by non-use of Common Properties or abandonment of the Living Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive on any municipal or other governmental authority.

The Developer shall not be obligated to pay any assessments of maintenance charges until it changes its status from a Class B member to a Class A member as outlined in Article IV above.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of the Association and for promoting the health, safety, and welfare of the residents of the Properties including the maintenance, improvement, enhancement and operation of the Common Properties and to provide services which the Association is authorized or required to provide.

Assessments shall also be used for the maintenance and repair of the surface water or stormwater management systems, including but not limited to, work within retention areas, drainage structures and drainage easements.

Section 3. Basis and Maximum of Annual Assessments. The portion of the Common Expenses to be levied against each Lot or Living Unit for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted Common Expenses, including reserves. In determining the amount of the Common Assessment, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots or Living Units subject to assessment under Section 1 above on the first day of the fiscal year for which the budget is prepared and the number of Lots or Living Units reasonably anticipated to become subject to assessment during the fiscal year. The annual assessment for each Lot in the properties shall be payable in advance.

- A. The annual assessment for each calendar year shall be established by the Board of Directors and may be increased without approval by the membership by an amount not to exceed the (10%) percent of the maximum annual assessment of the previous year.
- B. The annual assessment may be increased without limit by the affirmative vote of two-thirds (2/3) of those Members who are entitled to vote at a duly called meeting of the Members. Written notice of the meeting shall be given to all Members not less than thirty (30) days prior to the meeting and the notice shall set forth the purpose of the meeting.
- C. When the Board of Directors fixes the annual assessments for each calendar year, the Board shall, at the same time and in connection therewith, prepare, or cause to be prepared, an annual budget showing the services furnished by the Association and the costs thereof per Lot or Living Unit.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement or a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each of these Members who are entitled to vote and who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Date of Commencement of Annual and Special Assessments. The annual assessments provided for herein shall commence against each Lot on the date of its conveyance by the Developer to a purchaser thereof. The annual assessments for the year in which this Declaration is

recorded among the Public Records of Indian River County, Florida, shall be adjusted in accordance with the number of days remaining in said year from and after said recordation. Thereafter, the Board of Directors shall have the power to change the date upon which annual assessments become due and payable and also to determine the manner of payment of annual assessments; e.g., lump sums or quarterly installments; provided, however, that the annual assessments shall be due and payable not less frequently than annually

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 6. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on or before the past-due date specified herein, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owners, his heirs, devisees, personal representatives and assigns enforceable by suit, judgment and foreclosure. The personal obligation of the then Owner to pay such assessment shall pass to the Owner's successors in title.

If any assessment is delinquent for a period of thirty (30) days, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same and/or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney's fees to be fixed by the court together with the costs of the action including attorney's fees and costs on appeal.

Section 7. Association's Rights. The Association shall have the power to bid for the Lot or Living Unit, as applicable, at foreclosure sale and to acquire and hold, mortgage, and convey the same. During the period in which a property is owned by the Association following foreclosure:

- A. No right to vote shall be exercised on its behalf;
- B. No assessment shall be levied on it; and
- C. Each other Lot or Living Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot or Living Unit had it not been acquired by this Association as a result of foreclosure.

Suit to recover a money judgment for unpaid assessments, late charges, interest, costs, and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8. Subordination of the Lien to First Mortgages. The lien of the assessments,

including interest, late charges (subject to the limitations of Florida law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot or Living Unit. The sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Living Unit from lien rights for any assessments thereafter becoming due. Where the mortgagee holding a first Mortgage of record or other purchaser of a Lot or Living Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot or Living Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots and Living Units, including such acquirer, its successors and assigns.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and lien created herein: (a) all properties to the extent of any easement or other interest herein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties.

ARTICLE VII
OWNER'S RESPONSIBILITY/EXTERIOR MAINTENANCE ASSESSMENT

Section 1. Owner Maintenance. Each Owner shall maintain his or her Lot and all structures, parking areas and other improvements comprising the Lot. If any Owner fails to properly perform such maintenance responsibility, the Association may do so, and assess all costs incurred by the Association against the Lot and Owner as provided herein.

Section 2. Exterior Maintenance. In addition to maintenance upon the Common Properties, the Association may provide exterior maintenance upon any Lot or Living Unit requiring same, when necessary in the opinion of the Board of Directors of the Association to preserve the beauty, quality and desirability of the neighborhood, including without limitation paint, repair, roof repair and replacement, gutters, downspouts, exterior building surfaces and yard cleanup and/or maintenance.

Before the Association provides any exterior maintenance it shall give written notice to the Owner of a specific Lot or Living Unit the reasons why the Association intends to provide maintenance and the Owner shall have fifteen (15) days to provide the required maintenance at Owner's cost. If the Owner does not provide the necessary exterior maintenance, then the terms of this Article shall apply.

Section 3. Assessments of Costs. The cost of such maintenance shall be assessed against the Lot or Living Unit upon which such maintenance is performed or, in the opinion of the Board of Directors of the Association, benefitting from same. The assessment shall be apportioned in the manner determined to be appropriate by the Board of Directors of the Association. If no allocation is

made, the assessment shall be uniformly assessed against all of the Lots and Living Units in the affected area. The exterior maintenance assessments shall be considered part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot or Living Unit and the personal obligation of the Owner and shall become due and payable in all respects, together with interest and fees for the cost of collection, and provided for in the other assessments of the Association, and shall be subordinate to mortgage liens to the extent provided above.

Section 4. Access Reasonable Hours. For the purpose of performing the maintenance authorized by this or any other Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owners, to enter upon any Lot or the exterior or any improvements thereon at reasonable times and such access shall not be deemed trespass.

Section 5. Duties of Association. The Association shall be responsible for the maintenance; operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted or, if modified, as approved by the St. Johns River Water Management District.

**ARTICLE VIII
ARCHITECTURAL CONTROL**

Section 1. Architectural Review Committee. The architectural control functions of the Association shall be administered and performed by the Architectural Review Committee ("ARC"), which shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. The ARC shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. The Board of Directors shall appoint the members of the ARC who shall serve and may be removed at the discretion of the Board of Directors. The members of the ARC may include architects, engineers and other persons who are not members of the Association.

The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines and application and review procedures. Copies shall be available from the Architectural Review Committee for review. The guidelines and procedures shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such Owners, builders and developers shall conduct their operations strictly in accordance therewith. The ARC shall approve or disapprove plans submitted to it, or shall request additional information reasonably required, within forty-five (45) days after submission thereof. Following the submittal of all additional information which may be requested, the ARC shall approve or disapprove plans within

thirty (30) days thereafter.

Section 2. Construction Prohibited. No construction, which term shall include within its definition (without limitation) staking, clearing, excavation, grading, changing elevation, and other site work, no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place on any portion of the Properties except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the ARC has been obtained pursuant to the provisions set forth below. The Board of Directors may establish reasonable fees to be charged by the ARC on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed Florida architect.

This Article shall not apply to the activities of the Developer, nor to construction of improvements or modifications to the Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the ARC. This Article may not be amended without the Developer's written consent so long as the Developer owns any land subject to this Declaration.

Section 3. Modifications. The ARC shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Living Units or structures and the open space, if any, appurtenant thereto. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions, or alterations, shall be submitted to the ARC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Living Unit, or to paint the interior of his Living Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Unit visible from outside the Living Unit shall be subject to approval hereunder. The ARC shall approve or disapprove such plans or request additional information reasonably required within forty-five (45) days after submission. Following the submittal of all additional information which may be requested, the ARC shall approve or disapprove plans within thirty (30) days thereafter.

Section 4. Appeal. In the event that plans are disapproved by the ARC, the Owner shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President or Secretary of the Association within thirty (30) days after the date of disapproval. Procedures for such an appeal shall be determined by the Board of Directors. No action may be brought against the Association, its officers or directors, or the ARC or its members unless and until an appeal is made by the Owner and a decision on such an

appeal is made by the Board of Directors.

Section 5. Right to Inspect. Any member of the Board of Directors or the ARC or their representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of non-compliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

Section 6. No Waiver of Future Approvals. The approval of the ARC or of the Board of Directors of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee or the Board shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 7. Variance. The ARC or Board of Directors may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee or Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Section 8. Compliance With Guidelines. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the ARC may be excluded by the Board from the Properties without liability to any person.

Section 9. No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the ARC nor the Association shall bear any responsibility of ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Developer, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Living Unit.

Section 10. Developer Conveyance to Association. Developer shall have the right to grant and convey all its rights to enforce these covenants and restrictions to the Association at such time as in the sole judgment of Developer such Association is ready to undertake the obligation of enforcing

them. Upon such conveyance and grant, the Association shall have and succeed to all rights and duties with the same powers as if the Association had been Developer.

ARTICLE IX
USE RESTRICTIONS

Section 1. Residential Use. The Properties shall be used only for residential, recreation, and related purposes as may more particularly be set forth in this Declaration and amendments hereto.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless overruled, cancelled, or modified in a regular or special meeting of the Association.

Section 2. Occupancy of Living Units/Leasing. No Living Units shall be occupied by more than a single family. Living Units owned by corporations, partnerships, trusts or some other form of multiple ownership shall designate one (1) person and his or her family to occupy the Living Unit prior to, or at the time of, conveyance of the Living Unit to the multiple ownership entity. The designation of such occupants may be changed only with prior notice to the Board of Directors. For purposes of this Section the term "family" shall mean (a) persons related to one another by blood, marriage, or adoption, or (b) two single, unrelated persons and persons related to them by blood, marriage, or adoption.

No Owner may lease any Living Unit without prior approval of the Association. No Living Unit shall be leased, rented or occupied by any person other than the Owner for less than a ninety (90) day period or more than two (2) times in a calendar year. All such occupancies shall be subject to the requirements of this Declaration, the By-laws, and any rules and regulations promulgated pursuant thereto which govern the conduct of Owners. Any Owner intending to enter into a lease of a Living Unit shall provide Notice to the Association, and secure the consent of the Association in advance of the lease, as provided in Article XII hereof. Provided, however, denial of a prospective tenant or lessee by the Association shall be final and the Association shall not be required to furnish a substitute tenant or lessee.

Section 3. Signs. No sign of any kind shall be erected within the Properties without the written consent of the Board of Directors, except entry and directional signs installed by Developer and signs required for legal proceedings. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. No signs including, without limitation, "open house" signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties. Notwithstanding the above, the Board of Directors or Developer shall have the right to erect signs as they, in their discretion, deem appropriate.

Section 4. Parking and Prohibited Vehicles.

- A. Parking. Vehicles shall be parked only in the garages or in the driveways, serving the Living Units or in designated spaces or areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations adopted by the Board of Directors. The Developer and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules; provided however, there shall be no overnight parking of vehicles on streets within the Properties.
- B. Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Motorcycles, mopeds, motorized bicycles, motorized tricycles, go-carts, miniature cars, or similar motorized vehicles shall not be operated or parked on any street or any portion of the Common Properties. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Living Unit or the Common Properties. The Board shall have the power to tow or have towed any vehicle parked in violation of this Section or in violation of parking rules promulgated by the Board.

Section 5. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Living Unit. Every Owner shall cause all occupants, guests, and invitees of his or her Living Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Properties caused by such occupants, guests, and invitees, notwithstanding the fact that such occupants of a Living Unit are fully liable and may be sanctioned for any violation of the Declaration, By-laws, and rules and regulations adopted pursuant thereto.

Section 6. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets not to exceed a total of two (2) may be permitted in a Living Unit. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of the other Living Units or the owner of any portion of the Properties shall be removed upon request of the Board. If the owner fails to honor such request, the pet may be removed by the Board. No pets shall

be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Living Unit be confined on a leash no longer than ten (10) feet in length held by a responsible person. Owners shall promptly and properly remove animal excrement, should any animal defecate in any area outside the Owner's Lot.

Section 7. Quiet Enjoyment. No portion of the Properties 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 or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties 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 of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. 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 Properties. Except for outside burning by the Developer during development of the Properties, no outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

Section 8. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Living Unit. No rubbish, trash, garbage or other waste material shall be kept or permitted on the Properties except in containers located in appropriate areas, if any, and no odor shall be permitted to arise from any such containers so as to render the Properties or any portion thereof unsanitary, unsightly or offensive to any other adjacent property or to the occupants of adjacent property. No clothing or household fabrics shall be hung, dried or aired, and no lumber, grass, shrub or tree clippings or trash shall be kept, stored or allowed to accumulate on any portion of the Properties. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties.

Section 9. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Living Unit without the prior written consent of the Board or its designee. The Developer and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 10. Basketball and Playground Equipment, Clotheslines, Garbage Cans,

Tanks, Etc. All basketball hoops and backboards, swing sets or other playground equipment, clotheslines, garbage cans, above-ground storage tanks, mechanical equipment, and other similar items on Living Units shall be located or screened so as to be concealed from view of neighboring Living Units, streets, and property located adjacent to the Living Unit. However, mobile basketball hoops and backboards which are stored inside a garage or other storage area within a Living Unit when not in use are permitted. No basketball playing shall be permitted after 8:00 p.m. All rubbish, trash, and garbage shall be stored in appropriate containers hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon.

Section 11. Subdivision of Unit and Time Sharing. No Living Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Developer, however, hereby expressly reserves the right to replat any Lot or Lots owned by Developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Living Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Living Unit rotates among members of the program or a fixed or floating time schedule over any period of time.

Section 12. Firearms. The discharge of firearms, fireworks, and firecrackers within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

Section 13. Pools. No above-ground swimming pool shall be erected, constructed or installed on any Living Unit. All exterior in-ground pools and above-ground and in-ground spas and jacuzzies must be approved in accordance with Article VII of this Declaration.

Section 14. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties. All sprinkler and irrigation systems shall be subject to approval in accordance with Article VII of this Declaration. In the event a non-potable irrigation system is provided to the Living Unit, the Owner shall connect to that system. No private irrigation wells shall be permitted on any Living Unit.

Section 15. Manufactured Homes, Tents, Trailers, and Temporary and Accessory Structures. Except as may be permitted by the Developer or the ARC during initial construction within the Properties, no tent, utility shed, shack, trailer or other temporary or accessory structure shall be placed upon a Lot or any part of the Properties.

Section 16. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No

Person other than Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic tanks and drain fields are prohibited on the Properties where utilities are provided by the Developer.

Section 17. Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article VII of this Declaration and in accordance with any guidelines for tree removal adopted by the ARC as applicable. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the committee having jurisdiction, to replace the removed tree with one (1) or more trees of such size and number, and in such locations, as such committee may determine in its sole discretion.

Section 18. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed on permitted to remain where it would create a traffic or sight problem.

Section 19. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted on Lots within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.

Section 20. Air Conditioning Units. No window air conditioning units may be installed in any Living Unit.

Section 21. Lighting. Except for seasonal decorative lights, which may be displayed between Thanksgiving and January 10 only, all exterior lights must be approved in accordance with Article VII of this Declaration.

Section 22. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article VII of this Declaration.

Section 23. Energy Conservation Equipment and Greenhouses. No solar energy collector panels or attendant hardware or other energy conservation equipment or greenhouse shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article VII of this Declaration.

Section 24. Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Properties, if any, shall be storm water retention or waste management facilities or aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming,

boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or mangrove shoreline within the Properties. No docks, piers, or other structures shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Developer, the Association, or as approved pursuant to Article VII of this Declaration.

No docks, piers or other structural encroachments of any nature shall be permitted within any portion of the Common Properties which shall be dedicated as conservation areas as provided in Article V, Section 2, hereof.

Section 25. Alteration of Waterfront Units. The elevation of the land shall not be altered and fill shall not be used to extend the boundaries of a Lot or to change the bulkhead line on any Lot bounded by a wetland, lake or other body of water.

Section 26. Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 27. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit except as approved in accordance with Article VII of this Declaration. No chain link or PVC type fences which are visible from a street or any adjacent Living Unit shall be permitted on the Properties.

Section 28. Driveways and Mailboxes. The style and design of all driveways and mailboxes located on the Properties must be approved by the ARC in accordance with the design and development guidelines.

Section 29. Garages. All garages located on Living Units must be approved by the ARC in accordance with the design and development guidelines. In any event all Living Units must contain at least one (1) two-car garage. The doors of all garages located on the Properties shall be closed at all times except when the garage is being entered or exited.

Section 30. Helicopter and Aircraft Pads. No helicopter or aircraft pads shall be permitted on Lots.

Section 31. Business Use. No auction, garage sale, moving sale, rummage sale, flea market, or similar activity and no trade or business may be conducted in or from any Living Unit, except that an Owner or occupant residing in a Living Unit may conduct business activities within the Living Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Living Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons

coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade" as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. This Section shall not apply to any activity conducted by the Developer, its affiliates, or a builder approved by the Developer, with respect to its development and sale of the Properties or its use of any Living Units which it owns within the Properties, or to property designated or used by the Developer or its affiliates as a sales office, business office, title insurance agency, or other office.

Section 32. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties except that up to five (5) gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 33. Use of the Words "Marsh Island". No person shall use the words, "Marsh Island" or any derivative thereof in any printed or promotional material without the prior written consent of the Developer. However, the Association shall be entitled to use the words "Marsh Island" in its name.

Section 34. Speed Limit. The speed limit in Marsh Island is 15 M.P.H. All traffic directional signs are to be followed.

Section 35. Laws and Ordinances. Every Owner and occupant of any Living Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 36. Master Communication Facilities. Developer may, but shall not be required, to construct and install master telecommunications facilities or systems to serve the development, which may include internet access capability. In the event Developer elects to install said facilities, all Owners shall be required to subscribe to and utilize the same.

ARTICLE X
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Properties. If blanket all-risk coverage is not reasonable available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Association shall have no insurance responsibility for any part of the marina property.

The Board shall also obtain a public liability policy covering the Common Properties for all damage or injury caused by the negligence of the Association, any of its Members or agents or any other person who has a right to occupy a Living Unit. The public liability policy shall have at least a One Million (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million (\$3,000,000.00) Dollar limit per occurrence, if reasonably available, and a Five Hundred Thousand (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance on the Common Properties shall be Common Expenses of the Association and shall be included in the Assessment described in Article VI. The policies may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee. Such insurance shall be governed by the provisions hereinafter set forth:

- A. All policies shall be written with a company authorized to do business in Florida which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.
- B. All policies on the Common Properties shall be for the benefit of the Association and its Members.
- C. Exclusive authority to adjust losses under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors.
- D. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.
- E. All casualty insurance policies shall have an inflation guard endorsement, if reasonably

available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Indian River County, Florida area.

F. The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents, and guests;

(ii) A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) A statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;

(iv) A statement that no policy may be cancelled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee.

(v) A statement that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) As statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to any other insurance required by this Section, the Board may obtain, as a Common Expense directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required.

Section 2. Damage and Destruction.

- A. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.
- B. Any damage or destruction to the Common Properties shall be repaired or reconstructed unless the Members representing at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Properties shall be repaired or reconstructed.
- C. In the event that it should be determined in the manner described above that the damage or destruction to the Common Properties shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Properties shall be restored to their natural state and maintained by the Association in a neat and attractive condition.

Section 3. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate shall be retained by and for the benefit of the Association and placed in a capital improvements account.

Section 4. Repair and Reconstruction. If the damage or destruction to the Common Properties for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE XI
SECURITY

The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DEVELOPER, NOR ANY SUCCESSOR DEVELOPER SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, HOWEVER, AND NEITHER THE ASSOCIATION, THE DEVELOPER, NOR ANY SUCCESSOR DEVELOPER SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LIVING UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DEVELOPER, OR ANY SUCCESSOR DEVELOPER DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED BY DEVELOPER MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LIVING UNIT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DEVELOPER, OR ANY SUCCESSOR DEVELOPER ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LIVING UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LIVING UNITS AND TO THE CONTENTS OF LIVING UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DEVELOPER, OR ANY SUCCESSOR DEVELOPER HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

ARTICLE XII
RIGHT OF FIRST REFUSAL

Section 1. Rights of Association. In order to assure a community of congenial Owners and thus protect the value of the Living Units, the sale of Living Units by any Owner shall be subject to the following provisions:

- A. Associations' Right of First Refusal. Each Owner covenants and agrees that the Association, acting through its Board of Directors, shall have and is vested hereby a right of first refusal to purchase a Living Unit or any interest in a Living Unit which at any time may be offered for sale. Upon receipt of the notice described in subsection (c) of this Section, the Association, acting through its Board of Directors, shall have thirty (30) days to agree to purchase the Living Unit itself or produce a creditworthy purchaser approved by it who will accept the transaction under and through its right of first refusal. In either event, unless otherwise agreed, the consideration to be paid to the Owner shall be an amount equal to the best price which an able third party has in good faith offered to pay for the Living Unit and on terms no less favorable to the Owner than those offered by the good faith bona fide purchaser as stated in the notice to the Board. If the Board does not produce such a purchaser, or fails to agree to purchase the Living Unit itself, as the case may be, within the thirty (30) day period, the Owner shall have the right to effectuate such sale on the terms submitted.
- B. Unauthorized Sale Is Voidable. Any sale, voluntary transfer, or conveyance which is not authorized by the terms of this Declaration or for which authorization has not been obtained pursuant to this Section is voidable and may be voided by the Board by recording a certificate voiding the sale in the public records of Indian River County, Florida.
- C. Notice. All notices referred to in this Section shall be given by registered or certified United States mail, return receipt requested. Delivery shall be deemed made and notice shall be deemed given as of the date of acceptance thereof; but if acceptance is refused, delivery shall be deemed given as of the date of mailing. Notices shall be sent to the Association's president and to its manager.

An Owner intending to make a transfer or sale of a Living Unit or any interest in a Living Unit shall give notice to the Board of such intention. The Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; (ii) a copy of the executed sales contract for the sale of the Living Unit; and (iii) such other information as the Board may reasonably require. Such notice, when given, shall constitute a representation, warranty, and an offer to sell to any qualified purchaser produced by the Board.

Section 2. Owner's Right to Withdraw Living Unit From Proposed Sale. If the Board produces a purchaser who fulfills the requirements set forth in subsection (a) above and who agrees to the terms and conditions of the offer within the thirty (30) day period, the Owner shall be bound to consummate the transaction with the purchaser furnished by the Board in accordance with the terms thereof. At any time during the thirty (30) day period, if the Board has failed to act and has not produced a purchaser, the Owner may withdraw the offer to sell by written notice provided to the Board in the same manner as provided for under subsection (c) above.

Section 3. Form of Association's Consent. Any Owner or any person having executed a contract for the purchase of a Living Unit who requests the same shall be furnished a recordable statement certifying to the receipt by the Board of the notice specified in subsection (c) above or to any waiver or refusal or failure to exercise rights given to the Board in all cases where such waiver, failure, or refusal does in fact occur. Payment of a fee, not exceeding Fifty (\$50.00) Dollars, may be required as a prerequisite to the issuance of such a statement.

Section 4. Inapplicability to Mortgagees or Related Entity. The provisions of this Section shall not apply to a Mortgagee who comes into possession of a Living Unit under its rights pursuant to a Mortgage nor to any sales transaction entered into by the Mortgagee of a Living Unit who has become the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by the Mortgage. Furthermore, it is understood and agreed by the Association and each Owner that each Owner may assign, transfer, or convey all or part of its right, title and interest in and to a Living Unit without same being considered a sale or an offer to sell the respective Unit under the provisions of this Section when the conveyance or offer is made to: (i) members of an individual Owner's family; (ii) a person or entity which takes title, by gift, devise, or inheritance; (iii) a trust or similar fiduciary entity established by an individual Owner for the benefit of said Owner's family or any member thereof, including the Owner; or (iv) a successor partnership, corporation, or other business entity created by an Owner which in his or her sole discretion may be in the best interest of said Owner for business purposes, provided that at least fifty (50%) percent of the voting power of such entity has been retained by the original Owner. For purposes of this Section the term "family" shall mean persons related to one another by blood, marriage or adoption in the following degrees of kinship only: children, grandchildren, parents, brothers, sisters, aunts, uncles, nieces, and nephews.

**ARTICLE XIII
ENFORCEMENT**

The Board of Directors, or an Enforcement Committee established by the Board of Directors, with the Board's approval, may impose sanctions for violation of the Declaration, By-Laws, or the Association's rules and regulations. Such sanctions may include, without limitation:

- A. Imposing monetary fines which shall constitute a lien upon the Lot or Living Unit of the violator after compliance with the notice and hearing procedures set forth in the By-Laws. (In the event that any occupant, guest or invitee of a Living Unit violates the Declaration, By-Laws, or any Association rules and regulations and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.).
- B. Filing notices of violations in the public records providing record notice of any violation of the Declaration, By-Laws, or any Association rules and regulations;

- C. Suspending an Owner's right to vote:
- D. Suspending any Person's right to use any portion of the Common Properties provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Living Unit;
- E. Suspending any services provided by the Association to an Owner or the Owner's Living Unit if the Owner is more than ninety (90) days delinquent in paying any assessment or other charge owed to the Association;
- F. Filing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition, the Board may elect to enforce any provision of the Declaration, By-Laws, or any Association rules and regulations by exercising self-help (specifically including, but not limited to, the filing of liens in the public records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Declaration, By-Laws, or any Association rules and regulations). The Association may levy an assessment to cover all costs incurred in bringing a Unit or Living Unit into compliance with the terms of the Declaration, By-Laws, or any Association rules and regulations.

In the event that any occupant, guest or invitee of a Unit violates the Declaration, By-Laws, or any Association rules and regulations, the Board, or an Enforcement Committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Unit that the violator is occupying or visiting.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Declaration, By-Laws, or any Association rules and regulations, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs, reasonably incurred in such action, whether at trial or appellate levels.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, through the board, by contract or other agreement, shall have the right to

enforce county or municipal ordinances and to permit Indian River County to enforce ordinances on the Properties for the benefit of the Association and its Members.

The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in the Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

**ARTICLE XIV
DEVELOPER'S RIGHTS**

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots and Living Units shall continue, it shall be expressly permissible for Developer to maintain and carry on upon portions of the Common Properties such facilities and activities as, in the sole opinion of the Developer, may be reasonably required, convenient, or incidental to the construction or sale of such Lots and Living Units, including, but not limited to, business offices, signs, model units, and sales offices, and the Developer shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use any Living Units owned by the Developer and any which may be owned by the Association, as models and sales offices, respectively. In addition, so long as the Developer shall own or lease any portion of the property described in Article II to this Declaration, Developer shall have an easement of access, ingress, and egress across and over the Properties, including, without limitation the roads and other Common Properties.

So long as Developer continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Developer.

**ARTICLE XV
HEADINGS**

It is expressly understood that articles, titles or headings used herein are for convenience purposes only and may not be fully indicative of the meaning or intent of the full article. The entire article should be read as that is what is intended to be binding on the property subject hereto, the Developer, the Association and Members thereof.

**ARTICLE XVI
EFFECTIVE DATE**

This Declaration shall become effective upon its being recorded, with appropriate certificates,

on the public records of Indian River County, Florida.

ARTICLE XVII
GENERAL PROVISIONS

Section 1. Duration and Remedies for Violation. The covenants and restrictions of this Declaration shall run with and bind the property and shall inure to the benefit of and be enforceable by the Developer, the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part.

Violation or breach of any condition, covenant or restriction herein contained shall give the Developer and/or Association and/or Owner(s) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants and restrictions and to prevent the violation or breach of any of them and the expense of such litigation shall be borne by the then Owner of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants and restrictions. Expenses of litigation shall include reasonable attorney's fees incurred by the Developer and/or the Association in seeking such enforcement, both at trial and appellate levels.

Section 2. Amendment. Prior to the conveyance of the first Lot, Developer may unilaterally amend this Declaration. After such conveyance, the Developer may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots or Living Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots or Living Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots or Living units; provided, however, any such amendment shall not adversely affect the title to any Lot or Living Unit unless the Owner shall consent thereto in writing. During the Class "B" membership period, the Developer may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. During the Class "B" membership period, and notwithstanding the provisions of this Section, Developer shall have a right to amend the provisions of Article IX of this Declaration.

Thereafter, and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five (75%) percent of the total Class "A" votes in the Association, and the consent of the Class "B" Member, so long as

such membership exists. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Indian River County, Florida.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or construct between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege.

Section 3. St. John's Approval. Any amendment to this Declaration which may alter the surface water or stormwater management system, beyond maintenance in its original condition, including the water management portions of the Common Properties, must have the prior approval of the St. Johns River Water Management District.

Section 4. Right of Entry. The Association shall have the right, but not the obligation, to enter into a Living Unit for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the owner. This right of entry shall include the right of the Association to enter a Living Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 5. Easement of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and such portion or portions of the Common Properties as are adjacent thereto and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Properties or as between said adjacent Lots as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

Section 6. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or

imposed upon such officer, director, or committee member in connection with any action, suit, or other committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors or committee members may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director, and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former Association shall, as a common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonable available.

Section 7. Storm Precautions. No hurricane or storm shutters shall be permanently installed on any structure except as approved in accordance with Article VIII of this Declaration. However, hurricane or storm shutters approved in accordance with Article VIII may be used or operated, and other storm precautions may be taken to protect structures on a Living Unit, subject to such rules and regulations which may be imposed by the ARC or the Association.

Section 8. 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 when mailed, postage paid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

Section 9. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 10. Usage. Whenever used, the singular shall include the plural and the plural the singular and the use of any gender shall include all genders.

**ARTICLE XVIII
EASEMENTS FOR UTILITIES, ETC.**

Section I. Reservation of General Easements. There is hereby reserved unto Developer, so long as the Developer owns any property described in Article II, the Association, and the designees of each (which may include, without limitation, Indian River county, Florida, the Town of Orchid, Florida, and any utility), blanket easements upon, across, over, and under all of the Properties for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, lakes,

ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Living Unit and, except in an emergency, entry into any Living Unit shall be made only after reasonable notice to the Owner or occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier easements across all Living Units and the Common Properties on the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Developer.

Section 2. Specific Easements. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

**ARTICLE XIX
DEFAULT**

The Developer or other holder of any institutional first mortgage acquiring title to a Lot by foreclosure of its mortgage or by acceptance of a voluntary conveyance in lieu thereof or a purchaser at a judicial sale, resulting from the foreclosure of said first mortgage and their successors and assigns shall not be liable for prior assessments or liens pertaining to such Lots or chargeable to the former Lot Owner which become due prior to such acquisition of title. Such unpaid liens and assessments shall be collectible from all of the Lot Owners on a pro-rata basis if the Association deems same necessary.

**ARTICLE XX
SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM**

The Association shall be responsible for the maintenance, operation and repair of the surface water or stormwater management system. Maintenance of the surface water or stormwater management system(s) shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance or other surface water or stormwater management capabilities as permitted by the St. Johns River Water Management District. The Association shall be responsible for such maintenance and operation. Any repair or reconstruction of the surface water or stormwater management system shall be as permitted, or if modified as approved by the St. Johns River Water Management District.

The Developer has constructed a Drainage Swale upon each Lot for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lot from time to time. Each

Lot owner, including builders, shall be responsible for the maintenance, operation and repair of the swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow the swales to provide drainage, water storage, conveyance or other stormwater management capabilities as permitted by the St. Johns River Water Management District. Filling, excavation, construction of fences or otherwise obstructing the surface water flow in the swales is prohibited. No alteration of the Drainage Swale shall be authorized and any damage to any Drainage Swale, whether caused by natural or human-induced phenomena, shall be repaired and the Drainage Swale returned to its former condition as soon as possible by the Owner(s) of the Lot(s) upon which the Drainage Swale is located.

COPY

**ARTICLE XXI
LAWS GOVERNING**

It is expressly understood that the laws of the State of Florida shall govern the interpretation and enforcement of this Declaration and the provisions herein contained.

The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system.

IN WITNESS WHEREOF, the said Developer has caused these presents to be executed in its name, and its limited liability company seal to be hereunto affixed, by its proper officers thereunto duly authorized, the 23rd day of October, 2001.

COPY

**MARSH ISLAND DEVELOPMENT COMPANY,
L.L.C.,
a Florida limited liability company**

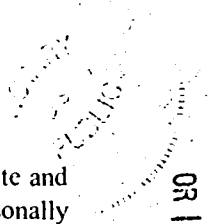
Cynthia L. Molinary
Notary Public, State of New York
Registration #01M06036753
Qualified in Ulster County
My Commission Expires 2/7/02

By: Stephen Mann
STEPHEN MANN, Manager
(L.L.C. SEAL)

STATE OF NEW YORK
COUNTY OF Ulster

COPY

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared STEPHEN MANN, personally known to me to be the Manager of MARSH ISLAND DEVELOPMENT COMPANY, L.L.C., a Florida limited liability company, and that he acknowledged executing the same freely and voluntarily under authority duly vested in him by said limited liability company and that the seal affixed thereto is the true seal of said limited liability company.



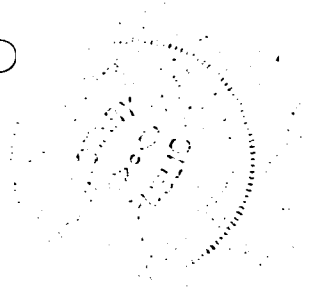
OR 1473PG1808

WITNESS my hand and official seal in the county and state last aforesaid this 23rd day of October, A.D., 2001.

Cynthia S. Malin
Notary Public.

(Notary Seal)

COPY



H:\km\MARSHISL\MARSHISL DEC 092 word

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OR 1473 PG 1809

EXHIBIT "A"

COPY

DESCRIPTION

THAT PORTION OF THE FOLLOWING DESCRIBED PARCEL OF LAND LYING LANDWARD OF THE MEAN HIGH WATER LINE OF THE INDIAN RIVER.

A PARCEL OF LAND ON WABASSO ISLAND BEING A PART OF GOVERNMENT LOT 4, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 39 EAST, LYING NORTHERLY OF AND ADJACENT TO STATE ROAD 510 IN INDIAN RIVER COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS;

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 27; THENCE NORTH 89 DEGREES 27 MINUTES 52 SECONDS WEST, A DISTANCE OF 828.82 FEET; THENCE SOUTH 52 DEGREES 15 MINUTES 00 SECONDS WEST, A DISTANCE OF 1950.39 FEET; THENCE NORTH 13 DEGREES 51 MINUTES 06 SECONDS WEST, A DISTANCE OF 140.47 FEET; THENCE NORTH 13 DEGREES 14 MINUTES 52 SECONDS WEST, A DISTANCE OF 3.98 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 51 DEGREES 45 MINUTES 03 SECONDS WEST, ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID STATE ROAD 510, A DISTANCE OF 265.08 FEET; THENCE SOUTH 44 DEGREES 24 MINUTES 06 SECONDS WEST, STILL ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 443.61 FEET; THENCE SOUTH 56 DEGREES 30 MINUTES 12 SECONDS WEST, A DISTANCE OF 388.25 FEET; THENCE NORTH 07 DEGREES 53 MINUTES 51 SECONDS WEST, A DISTANCE OF 101.02 FEET; THENCE NORTH 04 DEGREES 08 MINUTES 54 SECONDS WEST, A DISTANCE OF 375.52 FEET; THENCE NORTH 33 DEGREES 37 MINUTES 27 SECONDS WEST, A DISTANCE OF 157.50 FEET; THENCE NORTH 13 DEGREES 35 MINUTES 31 SECONDS EAST, A DISTANCE OF 107.44 FEET; THENCE NORTH 48 DEGREES 45 MINUTES 11 SECONDS WEST, A DISTANCE OF 254.17 FEET; THENCE NORTH 22 DEGREES 28 MINUTES 51 SECONDS WEST, A DISTANCE OF 251.16 FEET; THENCE NORTH 05 DEGREES 16 MINUTES 51 SECONDS WEST, A DISTANCE OF 204.00 FEET; THENCE NORTH 89 DEGREES 20 MINUTES 29 SECONDS WEST, A DISTANCE OF 23.38 FEET; THENCE NORTH 52 DEGREES 00 MINUTES 41 SECONDS WEST, A DISTANCE OF 83.19 FEET; THENCE NORTH 22 DEGREES 59 MINUTES 53 SECONDS WEST, A DISTANCE OF 95.41 FEET; THENCE NORTH 38 DEGREES 03 MINUTES 06 SECONDS EAST, A DISTANCE OF 126.94 FEET; THENCE NORTH 52 DEGREES 10 MINUTES 30 SECONDS EAST, A DISTANCE OF 304.55 FEET; THENCE NORTH 60 DEGREES 13 MINUTES 52 SECONDS EAST, A DISTANCE OF 88.39 FEET; THENCE SOUTH 72 DEGREES 07 MINUTES 01 SECONDS EAST, A DISTANCE OF 60.21 FEET; THENCE SOUTH 77 DEGREES 00 MINUTES 28 SECONDS EAST, A DISTANCE OF 59.25 FEET; THENCE SOUTH 50 DEGREES 30 MINUTES 08 SECONDS EAST, A DISTANCE OF 190.00 FEET; THENCE SOUTH 49 DEGREES 14 MINUTES 35 SECONDS EAST, A DISTANCE OF 186.33 FEET; THENCE SOUTH 01 DEGREES 05 MINUTES 26 SECONDS EAST, A DISTANCE OF 55.25 FEET; THENCE SOUTH 65 DEGREES 58 MINUTES 18 SECONDS EAST, A DISTANCE OF 89.72 FEET; THENCE SOUTH 24 DEGREES 00 MINUTES 55 SECONDS EAST, A DISTANCE OF 59.80 FEET; THENCE SOUTH 52 DEGREES 29 MINUTES 16 SECONDS EAST, A DISTANCE OF 63.75 FEET; THENCE SOUTH 21 DEGREES 57 MINUTES 28 SECONDS EAST, A DISTANCE OF 157.80 FEET; THENCE SOUTH 49 DEGREES 05 MINUTES 50 SECONDS EAST, A DISTANCE OF 156.81 FEET; THENCE SOUTH 87 DEGREES 57 MINUTES 49 SECONDS EAST, A DISTANCE OF 95.14 FEET; THENCE SOUTH 29 DEGREES 58 MINUTES 00 SECONDS EAST, A DISTANCE OF 137.48 FEET; THENCE SOUTH 61 DEGREES 20 MINUTES 51 SECONDS EAST, A DISTANCE OF 88.68 FEET; THENCE NORTH 71 DEGREES 23 MINUTES 28 SECONDS EAST, A DISTANCE OF 137.30 FEET; THENCE SOUTH 30 DEGREES 00 MINUTES 00 SECONDS EAST, A DISTANCE OF 15.00 FEET; THENCE SOUTH 58 DEGREES 41 MINUTES 13 SECONDS WEST, A DISTANCE OF 193.78 FEET; THENCE SOUTH 11 DEGREES 00 MINUTES 20 SECONDS EAST, A DISTANCE OF 95.19 FEET; THENCE SOUTH 13 DEGREES 14 MINUTES 52 SECONDS EAST, A DISTANCE OF 52.06 FEET, TO THE POINT OF BEGINNING.

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Prepared by and
Return recorded original to:
Mary Ellen Jones, Esq.
Office of General Counsel
St. Johns River Water Management District
P.O. Box 1429
Palatka, FL 32178-1429

COPY
CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this 25th day of January,
2002, by MARSH ISLAND DEVELOPMENT COMPANY, L.L.C., a Florida limited
liability company, having an address at 800 Third Ave., Suite 3700, New York, NY,
10022 ("Grantor"), in favor of the ST. JOHNS RIVER WATER MANAGEMENT
DISTRICT, a public body existing under Chapter 373, Florida Statutes, having a mailing
address at P.O. Box 1429, Palatka, Florida 32178-1429 ("Grantee" or "District").

COPY
WITNESSETH:

WHEREAS, Grantor solely owns in fee simple certain real property in Indian
River County, Florida, more particularly described in Exhibit "A" attached hereto and
incorporated by this reference (the "Property");

WHEREAS, Grantor grants this conservation easement as a condition of District
permit no. 4-061-65024-1 issued by Grantee, solely to off-set adverse impacts to
natural resources, fish and wildlife, and wetland functions; and

COPY

WHEREAS, Grantor desires to preserve the Property in its natural condition in
perpetuity.

NOW THEREFORE, in consideration of the above and the mutual covenants,
terms, conditions and restrictions contained herein, and pursuant to the provisions of
section 704.06, Florida Statutes, Grantor hereby voluntarily grants and conveys to

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Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement").

Grantor fully warrants title to said Property, and will warrant and defend the same against the lawful claims of all persons whomsoever.

1. Purpose. The purpose of this Conservation Easement is to assure that the Property will be retained forever in its existing natural condition and to prevent any use of the Property that will impair or interfere with the environmental value of the Property.

2. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- (a) Construction or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.
- (b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.
- (c) Removing, destroying or trimming trees, shrubs, or other vegetation.
- (d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.
- (e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- (g) Acts or uses detrimental to such retention of land or water areas.

OR 1473FG1812

(h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

3. Reserved Rights. Grantor reserves unto itself, and its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property, that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement.

Notwithstanding the prohibitions contained in Section 2, Grantor reserves unto itself, and its successors and assigns, the following rights:

(a) To trim and maintain mangroves in perpetuity in accordance with the Mangrove Trimming and Preservation Act, Sections 403.9321 through 403.9333, Florida Statutes (2001), and with Department of Environmental Protection General Permit Number 31-166674-001. In no event may mangroves be trimmed to a height of less than six feet (6'). Grantor must obtain all necessary local, state, and federal permits prior to the commencement of any trimming or maintenance activities. 10 days prior to the commencement of any mangrove trimming activities, Grantor shall notify the District in writing.

(b) To install irrigation systems where required to sustain vegetation. Installation of irrigation systems is limited to areas designated on the permitted plans as landscape buffer. 10 days prior to the commencement of any installation activities, Grantor shall notify the District in writing. Grantor shall obtain all necessary local, state and federal permits prior to the commencement of any installation activities.

OR 1473 PG 1813

4. Rights of Grantee. To accomplish the purposes stated herein, Grantor conveys the following rights to Grantee:

(a) To enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if Grantor or its successors and assigns are complying with the covenants and prohibitions contained in this Conservation Easement.

(b) To proceed at law or in equity to enforce the provisions of this Conservation Easement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein, and require the restoration of areas or features of the Property that may be damaged by any activity inconsistent with this Conservation Easement.

5. Grantee's Discretion. Grantee may enforce the terms of this Conservation Easement at its discretion, but if Grantor breaches any term of this Conservation Easement and Grantee does not exercise its rights under this Conservation Easement, Grantee's forbearance shall not be construed to be a waiver by Grantee of such term, or of any subsequent breach of the same, or any other term of this Conservation Easement, or of any of the Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantee shall not be obligated to Grantor, or to any other person or entity, to enforce the provisions of this Conservation Easement.

6. Grantee's Liability. Grantor will assume all liability for any injury or damage to the person or property of third parties which may occur on the Property arising from Grantor's ownership of the Property. Neither Grantors, nor any person or entity

OR 1473 PG 1814

claiming by or through Grantors, shall hold Grantee liable for any damage or injury to person or personal property which may occur on the Property.

7. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property or to persons resulting from such causes.

8. Recordation. Grantor shall record this Conservation Easement in timely fashion in the Official Records of Indian River County, Florida, and shall rerecord it at any time Grantee may require to preserve its rights. Grantor shall pay all recording costs and taxes necessary to record this Conservation Easement in the public records. Grantor will hold Grantee harmless from any recording costs or taxes necessary to record this Conservation Easement in the public records.

9. Successors. The covenants, terms, conditions and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

10. Transferability. Grantee has the right to transfer its interest under this easement, but Grantee may assign its rights and obligation under this easement only to an organization that is a qualified organization at the time of the transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulation promulgated thereunder, and authorized

OR 1473 PG 1815

to acquire and hold environmental easements under the statutes of the State of Florida (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the environmental purposes that this grant is intended to advance continue to be carried out.

11. **SEE BELOW

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the day and year first above written.

COPY

Signed, sealed and delivered in our presence as witnesses:

GRANTOR:
MARSH ISLAND DEVELOPMENT COMPANY, L.L.C., a Florida limited liability company

Signature: Barbara Frank
Printed Name: Barbara Frank
Signature: [Signature]
Printed Name: J.D. Johnson

Signature: [Signature]
Printed Name: Stephen Mann
Title: Managing Member

COPY

STATE OF FLORIDA New York
COUNTY OF New York Ulster (m)

The foregoing instrument was acknowledged before me this 25th day of September, 2001, by Stephen Mann, who did not take an oath.

COPY
Signature: [Signature]
Notary Public, State of Florida New York
at Large.
My Commission Expires: 2/17/02

Serial No. 01M06036753

Personally known OR produced identification . Identification produced Personally known.

INITIAL HERE

**11. Transfer by Grantor. Grantor may dedicate or convey the Property or any portion thereof to Marsh Island Homeowners' Association, Inc. Upon such conveyance and dedication, and transfer of the District permit to the Association, said Association shall have all obligations of Grantor hereunder.

CONSENT AND JOINDER OF MORTGAGEE

The undersigned, Bank of America (mortgagee), the mortgagee under that certain mortgage security agreement dated February 18, 2000 and recorded at Official Records Book 1319, page 1246, of Indian River County, Florida, (if any assignments, specify) hereby consents and joins in the foregoing Deed of Conservation Easement, and subordinates its mortgage lien encumbering all or any part of the Property (as described in the foregoing Deed of Conservation Easement) to the Deed of Conservation Easement.

COPY RECEIVED
4-061-65026-1
OCT 23 2000

IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this 20th day of OCTOBER, 2000.

4-061-65026-1
PALM BAY SERVICE CENTER

Witnesses:

Christina Hayes

Name: Christina Hayes

Joanne Pace

Name: Joanne C. Pace

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

Mortgagee

BANK OF AMERICA, N.A.

BY: Jeff T Olson

Name: JEFF T. OLSON

Title: VICE PRESIDENT

COPY

The foregoing instrument was acknowledged before me this 20 day of October, 2000, by Jeff Olson, who did not take an oath.

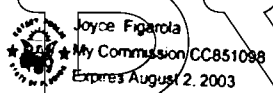
Joyce Figarola
Notary Public, State of Florida at Large.

My Commission Expires: 8/2/03

Serial No. CC851098

Personally known X OR produced identification

Identification produced _____



COPY

OR 1473PG1817

EXHIBIT "A"

A Parcel of land on Wabasso Island being a part of Government Lot 4, Section 27, Township 31 South, Range 39 East, Indian River County, Florida, said Parcels being also described as follows:

Tracts A and B, Plat of Marsh Island, P.D., according to the Plat thereof, as recorded in Plat Book 116, Page 71, of the public records of Indian River County, Florida.

COPY

H:\chm\MARSH ISL legal\des\conservation\exam\exam1.wpd

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ADDENDUM C: MARSH ISLAND

RULES & REGULATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



MARSH ISLAND RULES AND REGULATIONS
AND PROPERTY USE RESTRICTIONS

A. Rules and Regulations Approved by the Marsh Island HOA Board of Directors

1. All changes and/or additions to the exterior of a house must be approved in advance by the Architectural Review Committee. This includes repainting the house exterior (even if it is to be painted the same color as the existing paint), planting or removing trees and installing screened-in porches, trellises, mailboxes, sculptures, fountains, pools, fences, etc.
2. All air conditioning units, generators and pool equipment are to be concealed from public or neighbors' view using landscape treatments.
3. Except on trash pickup day garbage cans are to be stored in the garage or other enclosed structure on the owner's property so as to be concealed from public and neighbor's view.
4. Storage tanks, recreational equipment, and other ancillary items must be located so as to be concealed from public and neighbors' view.
5. Houses, accessory structures, lawns and landscaping must be properly maintained. If they are not, the HOA has the right to have the maintenance performed and bill the property owner accordingly after giving proper notice to the property owner.
6. Overnight parking is not permitted on the street or on vacant lots within Marsh Island. Exceptions may be made for temporary periods due to special circumstances, e.g., when guests are staying with the resident for a short period of time. During the day parking is permitted directly in front of a property owner's property on the same side of the street as the owner's property. Parking is not permitted on the lakeside of the street or on the lakeside grass.
7. The speed limit within Marsh Island is 15 miles per hour. Property owners are responsible for seeing that the speed limit is adhered to by guests and/or contractors visiting their residences. This is extremely important as there are small children living in and visiting homes within our community.

8. No boat trailers, trucks of any kind (including pick-up trucks), commercial vehicles or motor homes may be stored or parked within the development unless parked inside a garage. Exceptions can be made to these parking restrictions for temporary periods due to special circumstances as long as it doesn't last longer than a few days. Notwithstanding the foregoing, employee vehicles and service and delivery vehicles may be parked in the development during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a living unit or the common properties.
9. Motorcycles, mopeds, motorized bicycles, motorized tricycles, go-carts, miniature carts, or similar motorized vehicles shall not be operated or parked on any street or any portion of the common properties. This restriction does not apply to golf carts.
10. No cutting or altering of mangroves or other vegetation in the conservation area may be done without the express approval of the Homeowners' Association.
11. Owners who wish to rent out their homes must first notify the Property Manager. A copy of the tenant contact information and length of lease must be provided to the Property Manager prior to the tenant moving in.
12. Most property owners use well water for watering their lawns that is provided by the Homeowners' Association's irrigation system. The sprinkling system timers for each owner's property are to be set by an irrigation contractor hired by the Homeowners' Association. This is to make sure that the pressure in the overall system does not interfere with the proper functioning of the irrigation pump. If a homeowner would like to change the watering frequency because of new plantings or other reasons, please first notify the Property Manager or dockmaster so that the change can be made without negatively impacting the operation of the overall system.
13. Each summer, the Property Manager will assess the condition of mailboxes and as needed and arrange on a group basis for painting or replacement of mailboxes and if needed installing a metal base sleeve 6 inches high to prevent post deterioration by lawn maintenance equipment. The property owner will be billed for their portion of such maintenance.
14. All planting beds, tree rings, shrub grouping, and palm clusters shall be installed with a minimum layer of two (2) inches of clean fresh shredded natural brown cypress or natural hardwood mulch. Yard trimmings and commercial clipping residue will not be acceptable for use as plant mulch. Applying mulch will be required at least once a year in the Fall.
15. All homeowners and property owners are responsible for contracting with independent tree service companies to insure that annual tree landscape "cleaning" takes place before "Hurricane Season". Specifically all canopy trees, particularly palms and oaks, must be cleared of coconuts,

dead branches and fronds to minimize summer storm damage to homes and common areas. Dead trees must be removed and replaced during the annual tree trimming.

B Enforcement of Rules and Regulations

1. Each property owner is required to maintain his or her lot and all structures, parking areas and other improvements comprising the property. If any owner fails to properly perform such maintenance responsibility, the Association may do so, and assess all costs incurred by the Association against the owner. Before the Association provides any exterior maintenance it shall give written notice to the owner the reasons why the Association intends to provide maintenance and the owner shall have fifteen (15) days to provide the required maintenance at the owner's expense. If the owner does not provide the necessary maintenance, then the Association will begin to take steps to have the maintenance performed and assess the costs against the owner.
2. The Board of Directors, or an Enforcement Committee established by the Board of Directors, with the Board's approval, may impose sanctions for violation of the Covenants, By-Laws or the Rules and Regulations. Such sanctions may include, without limitation:
 - a) Imposing monetary fines which shall constitute a lien upon the property of the violator after compliance with the notice and hearing procedures set forth in the By-Laws.
 - b) Filing notices of violations and/or liens in the public records.
 - c) Suspending an owner's right to vote.
 - d) suspending any person's right to use any portion of the common properties provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a living unit.
 - e) Suspending any services provided by the Association to an owner or the Owner's living unit if the owner is more than ninety (90) days delinquent in paying any assessment or other charge owed to the Association.
 - f) Filing suit at law or in equity to enjoin any violation or to recover monetary damages or both.
3. In addition, the Board may elect to enforce any provision of the Covenants, By-Laws, or any Association rules and regulations by exercising self help, specifically including the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Covenants, By-Laws or any Association rules and regulations. The Association may levy an assessment to cover all the costs incurred in bringing a property into compliance.
4. Any property owner can report a violation of any rule or regulation to the Association's Property Manager. Before notifying an owner who is in violation of a rule, the Property Manager will

first notify the President of the Association Board of Directors. The Board must approve the assessment of fines, performance of maintenance or assessment of other penalties.

5. Upon notification and authorization by the President, the Property Manager will immediately advise the homeowner by certified mail, return receipt, of the violation, citing the nature of the violation and requesting compliance within 15 days unless the owner provides a written request for an extension of time stating the circumstances for the extension. If the violation has not been corrected within 15 days or an extension has not been granted in writing, the property manager will send a second letter to the homeowner certified mail return receipt citing the rule in violation, the fine that will be levied on the homeowner if rule violation is not corrected in 30 days.
6. Upon receipt from a homeowner of a request for an extension of time to correct a violation, the President may grant an extension of up to 90 days. An extension over 90 days must be approved by the Board of Directors.
7. At any time in the Enforcement process, the homeowner may request in writing a hearing before the Board of Directors. The minutes of the meeting shall contain a written statement of the results of the hearing including the fine or other penalty imposed.

C. Additional Use Restrictions Contained in Article IX of the Declarations

Section 1. Residential Use. The Properties shall be used only for residential, recreation, and related purposes as may more particularly be set forth in this Declaration and amendments hereto.

The Association, acting through its Board of Directors, shall have authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless overruled, cancelled, or modified in a regular or special meeting of the Association.

Section 2. Occupancy of Living Units/Leasing. No Living Units shall be occupied by more than a single family. Living Units owned by corporations, partnerships, trust or some other form of multiple ownership shall designate one (1) person and his or her family to occupy the Living Unit prior to, or at the time of, conveyance of the Living Unit to the multiple ownership entity. The designation of such occupants may be changed only with prior-notice to the Board of Directors. For purposes of this Section the term "family" shall mean (a) persons related to one another by blood, marriage, or adoption, or (b) two single, unrelated persons and persons related to them by blood, marriage, or adoption.

No Owner may lease any Living Unit without prior approval of the Association. No Living Unit shall be leased, rented or occupied by any person other than the Owner for less than a ninety (90) day period or more than two (2) times in a calendar year. All such occupancies shall be subject to the requirements of this Declaration, the By-laws, and any rules and regulations promulgated pursuant thereto which govern the conduct of Owners. Any Owner intending to enter into a lease of a Living Unit

shall provide Notice to the Association, and secure the consent of the Association in advance of the lease, as provided in Article XII hereof. Provided, however, denial of a prospective tenant or lessee by the Association shall be final and the Association shall not be required to furnish a substitute tenant or lessee.

Section 3. Signs. No sign of any kind shall be erected within the Properties without the written consent of the Board of Directors. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. No signs including, without limitation, “open house” signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties. Notwithstanding the above, the Board of Directors shall have the right to erect signs as it, in its discretion, deems appropriate.

Section 4. Parking and Prohibited Vehicles.

- A. Parking. Vehicles shall be parked only in the garages or in the driveways, serving the Living Units or in designated spaces or areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations adopted by the Board of Directors. The Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules; provided however, there shall be no overnight parking of vehicles on streets within the Properties.
- B. Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Motorcycles, mopeds, motorized bicycles, motorized tricycles, go-carts, miniature carts, or similar motorized vehicles shall not be operated or parked on any street or any portion of the Common Properties. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Living Unit or the Common Properties. The Board shall have the power to tow or have towed any vehicle parked in violation of this Section or in violation of parking rules promulgated by the Board.

Section 5. Occupants Bound. All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Living Unit. Every Owner shall cause all occupants, guests, and invitees of his or her Living Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Properties caused by such occupants, guests, and invitees, notwithstanding the fact that such occupants of a Living Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

Section 6. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common household pets not to exceed a total of two (2) may be permitted in a Living Unit. However, those pets which are permitted to room free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of the other Living Units or the owner of any portion of the Properties shall be removed upon request of the Board. If the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Living Unit be confined on a leash no longer than 10 (10) feet in length held by a responsible person. Owners shall promptly and properly remove animal excrement, should any animal defecate in any area outside of the Owner's Lot.

Section 7. Quiet Enjoyment. No portion of the Properties 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 or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties 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 of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. 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 Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

Section 8. Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Living Unit. No rubbish, trash, garbage or other waste material shall be kept or permitted on the Properties except in containers located in appropriate areas, if any, and no odor shall be permitted to arise from any such containers so as to render the Properties or any portion thereof unsanitary, unsightly or offensive to any other adjacent property or to the occupants of adjacent property. No clothing or household fabrics shall be hung, dried or aired, and no lumber, grass, shrub or tree clipping or trash shall be kept, stored or allowed to accumulate on any portion of the Properties. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken of any part of the Properties.

Section 9. Antennas. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Living Unit without the prior written consent of the Architectural Review Committee. The Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

Section 10. Basketball and Playground Equipment, Clotheslines, Garbage Cans, Tanks, Etc. All basketball hoops and backboards, swing sets or other playground equipment, clotheslines, garbage cans, above-ground storage tanks, mechanical equipment, and other similar items on Living Units shall be located or screened so as to be concealed from view of neighboring Living Units, streets, and property located adjacent to the Living Unit. However, mobile basket ball hoops and backboards which are stored inside a garage or other storage area within a Living Unit when not in use are permitted. No basketball playing shall be permitted after 8:00 p.m. All rubbish, trash, and garbage shall be stored in appropriate containers hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon.

Section 11. Subdivision of Unit and Time Sharing. No Living Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association.

No Living Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Living Unit rotates among members of the program or a fixed or floating time schedule over any period of time.

Section 12. Firearms. The discharge of firearms, fireworks, and firecrackers within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the By-Laws, the Association shall not be obligated to take action to enforce this Section.

Section 13. Pools. No above-ground swimming pool shall be erected, constructed or installed on any Living Unit. All exterior in-ground pools and above-ground and in-ground spas and Jacuzzis must be approved in accordance with Article VII of this Declaration.

Section 14. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties. All sprinkler and irrigation systems shall be subject to approval in accordance with Article VII of this Declaration. In the event a non-potable irrigation system is provided to the Living Unit, the Owner shall connect to that system. No private irrigation wells shall be permitted on any Living Unit.

Section 15. Manufactured Homes, Tents, Trailers, and Temporary and Accessory Structures. No tent, utility shed, shack, trailer or other temporary or accessory structure shall be placed upon a Lot or any part of the Properties.

Section 16. Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person may obstruct or re-channel the drainage flows of drainage swales, storm sewers, or storm drains. The Association hereby reserves for itself a perpetual easement across the Properties for the purpose of altering drainage and water flow.

Section 17. Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved

in accordance with Article VII of this Declaration and in accordance with any guidelines for tree removal adopted by the ARC as applicable. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the committee having jurisdiction, to replace the removed tree with one (1) or more trees of such size and number, and in such locations, as such committee may determine in its sole discretion.

Section 18. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 19. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted on Lots within the Properties, except for temporary lines as required during construction and high voltage lines if required by law or for safety purposes.

Section 20. Air Conditioning Units. No window air conditioning units may be installed in any Living Unit.

Section 21. Lighting. Except for seasonal decorative lights, which may be displayed between Thanksgiving and January 10 only, all exterior lights must be approved in accordance with Article VII of this Declaration.

Section 22. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article VII of this Declaration.

Section 23. Energy Conservation Equipment and Greenhouses. No solar energy collector panels or attendant hardware or other energy conservation equipment or greenhouse shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article VII of this Declaration.

Section 24. Wetlands, Lakes and Water Bodies. All wetlands, lakes, ponds, and streams within the Properties, if any, shall be storm water retention or waste management facilities or aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or mangrove shoreline within the Properties. No docks, piers, or other structures shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Association or as approved pursuant to Article VII of this Declaration.

No docks, piers or other structural encroachments of any nature shall be permitted within any portion of the Common Properties which shall be dedicated as conservation areas as provided in Article V, Section 2, hereof.

Section 25. Alteration of Waterfront Units. The elevation of the land shall not be altered and fill shall not be used to extend the boundaries of a Lot or to change the bulkhead line on any Lot bounded by a wetland, lake or other body of water.

Section 26. Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring therein or related to use thereof.

Section 27. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit except as approved in accordance with Article VII of this Declaration. No chain link or PVC type fences which are visible from a street or any adjacent Living Unit shall be permitted on the Properties.

Section 28. Driveways and Mailboxes. The style and design of all driveways and mailboxes located on the Properties must be approved by the ARC in accordance with the design and development guidelines.

Section 29. Garages. All garages located on Living Units must be approved by the ARC in accordance with the design and development guidelines. In any event all Living Units must contain at least one (1) two-car garage. The doors of all garages located on the Properties shall be closed at all times except when the garage is being entered or exited.

Section 30. Helicopter and Aircraft Pads. No helicopter or aircraft pads shall be permitted on Lots.

Section 31. Business Use. No auction, garage sale, moving sale, rummage sale, flea market, or similar activity and no trade or business may be conducted in or from any Living Unit, except that an Owner or occupant residing in a Living Unit may conduct business activities within the Living Unit so long as: (a) the existence or operations of the business activity is not apparent or detectable by sight, sound or smell from outside the Living Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons

ADDENDUM D: MARSH ISLAND

ARC GUIDELINES

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



Marsh Island Community

Architectural Guidelines

Architectural Review Committee Members:

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I. Introduction

Overview

This Guideline presents the architectural, engineering, landscaping and construction standards for building a residence on Marsh Island. These standards establish the overall design concept and serve as reasonable parameters for design and construction professionals in creating exceptional individual homes. Marsh Island will be a small community, and these standards are intended to respect the natural character of the island and produce a harmonious environment for the mutual benefit of all residents. Owners and their design professionals should carefully review all materials in this Guideline and consult with the Architectural Review Committee before starting design. A preliminary design meeting is required.

1A. Architectural Vision

- 1A-1** Marsh Island encourages the design of houses and out-buildings suitable for sub-tropical living, drawing from a broad range of vernacular treatments of classical traditions. Anglo Caribbean style with steeply pitched roofs is strongly encouraged. Specific provisions for the building envelopes encourage Owners to build houses that are well-ventilated in temperate seasons. The standards also encourage, but do not mandate, the construction of a separate guesthouse/ garage at the road, with entry gardens and auto courts that suppress the negative visual effect of cars and garages.
- 1A-2** Those portions of individual Lots that are most public will receive simple and modest treatment of building surfaces, including use of materials, massing and detailing. Ornamentation will derive chiefly from the elements of individual assemblies such as eaves and covered porches. Windows and doors will be configured in a manner consistent with a tradition of bearing masonry walls that distinguishes the Caribbean.
- 1A-3** More exacting review standards will be applied to areas in public view, especially at the waterfront. Water frontage will be treated with the control appropriate to creating a coherent public space. Issues affecting privacy or other forms of intrusion, even if they occur within a property, will similarly be regarded as public issues and will be subject to stricter review.

1B. Owner Compliance

- 1B-1** Each Owner is required to comply with the standards set forth in this Guideline, although exceptions shall be made if any local building laws, codes or ordinances are more restrictive than what is set forth herein. The contents of this Guideline

may be revised or updated at the discretion of the Board of Directors without prior notice.

- 1B-2** All Owners are required to contact the Architectural Review Committee (ARC) early in the design process to set up a preliminary meeting. This meeting will acquaint Owners with the overall design intent and answer any questions before design concepts are developed.

1C. Review and Monitoring

- 1C-1** The Architectural Review Committee will carefully review and monitor compliance with this Guideline. Since not every issue can be anticipated, the ARC will have the latitude to render specific determinations based on the broad goals outlined herein.

The review process and approval procedure is explained in Section 7 of the Guideline.

1D. Definitions

- 1D-1** **Accessory Structure**
A roofed structure such as a cabana, gazebo, guesthouse or garage, which extends vertically above finished grade, and is detached from the main residence.
- 1D-2** **Association**
The Marsh Island Homeowner’s Association, Inc.
- 1D-3** **Board of Directors**
The Board of Directors of the Association.
- 1D-4** **Building**
Any structure built for the support, shelter or enclosure of persons, or property of any kind, which has enclosing walls for fifty percent (50%) of its perimeter. The term “Building” shall be as if followed by the word “or part thereof”.
- 1D-5** **Common Areas**
An inclusive term referring to all areas other than Lot areas.
- 1D-6** **Enclosed Dwelling Space**
The total enclosed heat and air-conditioned area within a Building. It does not include garages, terraces, decks, open porches, verandas, and similar areas.
- 1D-7** **FEMA**
Federal Emergency Management Agency

1D-8 **Lot**
Includes “tract” or “parcel” and means lands having limited fixed boundaries and an assigned number through which it may be indentified.

9D-9 **Lot Type**

Lots are divided into the following Lot Types:

LOTS 1-20	Waterfront Lots
LOTS 21-28	Marina Lots
LOTS 29-32	Lakefront Lots

1D-10 **Lot Width**
The distance between the side Lot lines, measured along the front building setback line when a front yard is required; otherwise, the Lot width shall be the mean horizontal distance of the Lot measured at right angles to the depth.

1D-11 **Marsh Island (The Community)**
Property on Marsh Island, Vero Beach, Florida that has been platted in the public records and subject to the Declaration of Covenants, Conditions, Reservations and Restrictions of the Association.

1D-12 **Owner**
Any person or entity that holds the record title to a Lot.

1D-13 **Story**
That portion of a Building included between the upper surface of the floor or ceiling next above.

1D-14 **Streetscape Buffer Landscape Zone**
The first eight feet of the Lot from the front Lot line.

1D-15 **Unit**
The primary residential Building constructed upon a Lot.

1D-16 **Yard (Front)**
The full width and/or length of the Lot extending from the nearest point of a building or structure, excluding permitted encroachments, to any front line of the Lot. That part of any Lot line abutting any established or proposed street right-of-way line other than an alley shall be a “front Lot line”. On Lots abutting more than one established or proposed street right-of-way line, the “front Lot line” shall be that from which the street address of the Lot is assigned.

1D-17**Yard (Rear)**

A yard extending across the rear of a Lot measured between Lot lines and being the minimum horizontal distance between the rear Lot line and the rear of the main building or any projections other than permitted encroachments. On Lots with one front Lot line, the Lot line opposite the front Lot line shall be the rear Lot line. On Lots that abut more than one street, the remaining Lot lines shall be considered side yards.

2. Building Policies and Guidelines

Overview

This section addresses the basic planning and zoning issues affecting the Lots. These provisions are not intended to supersede provisions of Indian River County's Land Development Regulations, except as specifically provided for as variances in the county's approval of the community. All other county restrictions shall apply, and designers and architects are advised to consult the county Land Development Regulations.

2A. Variances

2A-1 Marsh Island has obtained specific variances to reduce the side and front setbacks of certain Lots. Chart number I below shows the setback requirements within the community. The purpose of these reduced setbacks is to:

- A. Provide greater design flexibility.
- B. Limit the Building depth at both the rear setback and at the side wings of the main house along the Waterfront Lots. Marsh Island has sought to limit the allowable depth of a given wing to preserve natural lighting, ventilation, and to encourage interior gardens.

In Lots 1-20, the initial setback of the principal residence is 25 feet from the property line. This area is intended to be the location of "Accessory Structures" as described in 2B below.

2B. Accessory Structures

2B-1 Most Waterfront Lots are large enough to accommodate a gazebo, cabana, or guesthouse, and a detached garage, in addition to the main residence. If built, these Accessory Structures must be located within the required setbacks and be compatible with the architectural details of the home. Roofs and exterior walls of these Accessory Structures, for example, must be compatible with the main house in design, detail and color. The rationale for encouraging placement of these Accessory Structures within the first 25' is to create a varied streetscape, an architectural arrival sequence into the residence and interior spaces which buffer the home from the road.

2B-2 Each type of Accessory Structure is required to comply with certain maximum height, roof slopes, materials, elevations and area requirements for doors, setbacks and exterior lighting. See section 3C.

2C. Buildings, Accessory Structures, Setbacks and Envelopes

The Building setbacks and envelopes set forth in Chart 1 below, the Building Set Back Diagrams in Exhibit 1, and the Building Location Diagrams in Exhibit 2 illustrate the placement of buildings, garages, decks, patios, walls and hedges, depending on the Lot's location. Some Lots may require variations to the illustrations due to special factors, or may be reversed due to Lot adjacencies. The ARC will establish setbacks on these Lots in consultation with the Owner and architect during the initial review stage.

CHART I- BUILDING ENVELOPE REQUIREMENTS

DESCRIPTION OF LOT ATTRIBUTES	COUNTY ZONING CRITERIA (RM-4)	LOTS 1-20	LOTS 21-28	LOTS 29-32
		WATERFRONT	MARINA	LAKEFRONT
Lot Size	10,000 SF	10,000 SF	6,700 SF	10,000 SF
Lot Width	80' -0"	80' -0"	67' -0"	80' -0"
Front yard Setback	25' -0"	8' / 25' -0"	8' -0"	8' -0"
Rear Yard Setback	25' -0"	10' -0" from upland buffer	10' -0"	10' -0"
Sideward Setback	10' -0"	5' -0" / 12' -0"	5' -0"	12' -0"
Minimum	10' -0"	40' -0"	40' -0"	40' -0"
Right-of-Way Width				
Indian River Lagoon Setback	50' -0" from HWL	25' -0" from wetland boundary	N/A	50' -0" from MHWL
Side Lot	2' -0"	2' -0"	0' -0"	2' -0"
Driveway Setback				
Driveway Aisle	22' -0"	N/A	18' -0"	N/A

* The 8' -0" front setback applies only to side and rear loaded garages. Front loaded garages and principal residences will be set back 25' -0". Guest Houses are allowed after the initial 8' -0" setback.

** Decks and other ancillary structures can be located within 5' -0" of the upland buffer line.

*** The 5' -0" side setback applies only to the front 50' -0" of the Lot and applies only to garages and guesthouses. Any principal residence located on the front 50' -0" will need to meet a 12' -0" side yard setback. All structures set back 50' -0" will require a 12' -0" setback line.

2D. Building Heights

See Chart 2 for all height and area limitations.

2D-1 Maximum heights of building chimneys are in addition to maximum heights allowed. Houses shall have a maximum of two (2) floors.

2D-2 Marsh Island will have a minimum finish floor height of 10.50 NGVD.. Garages are exempt from this minimum raised floor requirement.

2D-3 The County building height is 35 feet. Consult with County Planning Department for additional information.

2D-4 The maximum plate height for any structure within the front 25' shall be 20'-0" measured from finish grade.

2D-5 Flat roofed buildings are prohibited, although second floor terraces are permitted.

2E. Required Walls

2E-1 Interior site walls between Lots are intended to provide privacy. It is desirable that screening walls between pools and side property lines, side yards and adjacent properties be created with combinations of evergreen and flowering hedges or similar multi-tiered arrangements of planting materials. Wall locations are set forth on the Building Location Diagrams (See Exhibit 2.)

2F. Building Limitations

2F-1 All Marsh Island residences shall have minimum square footages, number of stories and building coverage as listed below. These requirements may be revised on a case by case basis where overall design quality would be compromised by their strict application.

Chart 2-Building Limitations			
Lot Description	Minimum Air Conditioned Living Area Square Footage	Number of Stories	Maximum Building Coverage
Lots 1-20 Waterfront	4,500 SF	Two*	As approved by ARC
Lots 21-28 Marina	3,000 SF - Total 2,000 SF - 1 st floor	Two*	50 Percent
Lots 29-32 Lakefront	2,500 SF	One and a half Maximum*	As approved by ARC

* Rooftop ancillary structures, such as cupolas and widow’s walks are not included as a story.

3. Architectural Standards

3A. Doors

3A-1 Front doors make a strong architectural statement and are subject to extra scrutiny by the ARC. The use of double front entry doors is discouraged. Doors enhanced by sidelights and/or transoms are encouraged. No screen doors permitted at front entry. No fiberglass or vinyl materials permitted for front doors.

3A-2 Sliding patio doors may be used when not visible from public areas.

3A-3 See section 3C-4 for garage door requirements.

3B. Driveways/ Motor Courts

3B-1 Lots 1-20 and Lots 29-32: Driveways must be located at least ten (10) feet from the side property lines. One 12’ wide curb is permitted per lot.

Lots 21-28: Driveways must be located at least two (2) feet from the side property line.

Garage door orientation will be reviewed by the ARC on an individual basis. Garage doors may not face the street except on lots 21-24.

3B-2 Driveway aprons shall be limited to a maximum radius of 6 feet per side, and no driveway (exclusive of apron turnouts) shall be greater than 12 feet in width.

3B-3 Materials that are recommended or discouraged for use in the driveway and or motor court are set forth below:

- **Approved Materials**
 - Tabby Seashell set in concrete
 - Brick Pavers – color and pattern must be approved
 - Stone border or curb with gravel
 - Rock salt finished concrete with brick border
- **Prohibited Materials**
 - Textured Asphalt
 - Interlocking Concrete Paver
 - Loose Stone Chattahoochee Set In Epoxy
 - Patterned Stamped Concrete

Two examples follow:

- A. Stone pavers are used to form the driveway system and extend from the roadway to the first 8-foot setback inside of the property.
- B. Stone pavers are used as a border for the motor court, with a gravel infill for the motor court proper.

3C. Garages/ Guesthouses

3C-1 Only one detached structure is recommended on Lots 1-20 and 29-32 in the first 25'. The detached structure can be a garage, guesthouse, or combination garage/ guesthouse.

3C-2 All garages must accommodate no more than three (3) cars. Garages may be detached from the main residence or integrated into the lower level. Garages are not required to be raised above adjacent grade. See Building/ Accessory Structures Setbacks and Envelopes (Section 2C). Carports are not permitted.

3C-3 The design of the garage must be in harmony with the design of the principal residence with respect to scale, materials, lighting, details, colors, hardware and other visible features. Special attention must be given to the elements of the garage and guesthouse structures that face the public roadway.

It is highly desirable that the garage resemble a small guesthouse and not a garage building. This structure should be designed to reinforce the garden setting of the home and complement the landscaping at the first setback distance.

3C-4 Garage doors should be solid and be compatible with the exterior wall design and color. Garage doors must incorporate automatic garage door openers. Garages are encouraged to be

side loading, except on Lots 21-24. On these Lots (21-24), front-loading doors will be permitted, however, doors are required to be integrated into the architecture of the garage structure as an element. Garage doors must be a minimum of nine feet wide and eight feet tall.

3C-5 If the guesthouse is built on top of a garage to form a two story structure, the entire structure should be developed as one integrated cottage, in similar style and detail as the main house. One of the following ornamental elements will be encouraged to be integrated into the two story structure:

A terrace element facing the roadway, or covered balcony of sufficient length to be in harmony with the building elevation will be encouraged. The terrace will be integrated with the lower elevation of the sidewall of the garage with elements such as recesses or other features, to tie the floors together as one building. Balcony projections will be limited to 3'-0" from the face of the wall.

3C-6 Elements of the guesthouse should be consistent with the main house. It is highly desirable to integrate the landscaping walls and a combination of hedges (evergreen and flowering) and fencing into the design of the guesthouse so that glimpses of the motor court and main house are visible, but that a portion of the main residence is screened from the roadway. Fencing within the initial setback distance will be reviewed for conformity to roadway design and color.

3D. Garden Structures

3D-1 The ARC will review detached garden structures on a case-by-case basis, taking into account the impact of the structure on neighboring residences and views. Structures must be located within the setbacks. See Setback Diagrams, Exhibit 1.

3E. Gutters/ Eaves

3E-1 Gutters may be approved as part of the roof fascia and eave system when special attention is given to down spout locations and overall color compatibility. Gutters are to be half round copper or aluminum only.

3E-2 All buildings, residences, garages, and guesthouses are required to provide one of the following eave conditions as part of the architectural design:

A. Open eaves with tails. Rafter tails to be in keeping with the style and character of the house. Rafter tails to be approved by the ARC.

3F. Mailboxes

3F-1 It is the Owner's responsibility to have an approved box installed as per Building Location Diagrams (Exhibit 2). Locations other than those specified will be reviewed by the ARC. There will be one approved mailbox for use by all residents. The designated model is Oxford by

Streetscape, Inc. Installation will be on a white painted 6x6" post with a 6" metal protective sleeve installed at base.

3G. Exterior Wall Materials and Finishes

3G-1 Approved Materials

Stucco
Painted Wood Siding or Cementitious smooth plank siding

3G-2 Prohibited Materials

Vinyl Siding
Exterior Plywood Sheathing
Asphalt Siding
Metal Siding
Brick (unpainted)
Stone

3H. Exterior Colors

3H-1 When exterior colors are reviewed, the ARC will take into account the combination and intensity of colors selected, their appropriate use, and the palette of surrounding residences.

3H-2 A sample palette of recommended colors can be obtained from the ARC.

3I. Outdoor Lighting

3I-1 Copper, nickel, bronze or painted (maritime coating) metal surface-mounted light fixtures are required for covered porches. Ceiling fans located on porches may not have integral light fixtures.

3I-2 All homes constructed after December 17, 2015 must install front yard landscape lighting that can be seen from the public roadway. It is to be recessed uplight type, such as Hydrel or equal. Where trees are installed along the roadway, uplight should be provided at tree branching. Only white lights (no colored lights) may be used in the front yard.

3I-3 Shielding is required when exterior lighting is located within 10'-0" of the adjacent property line, or in conditions where light spill provides unwanted lighting on adjacent property. Shielding elements could be in the form of landscaping, evergreen hedges, light shields, or other elements that effectively focus or shield the unwanted light from the affected areas.

3I-4 Landscape lighting must be low voltage. Transformers must be buried or located out of view from the main access road.

3I-5 Any post light or cast light fixture to be located within the front setback area must be submitted for ARC approval. Light fixtures must conform to the character of the house.

3J. Pools/ Pool Cabanas

3J-1 Pools on Waterfront Lots (1-20) must be located in the rear or side of the residence, and must conform to the setback requirements as indicated (See Exhibit 1). All pools are required to be shielded from adjacent properties at side Lot lines with some form of hedge, landscaping or other soft element. Screening elements to be at least 5'-0" in height, or as approved by the ARC.

3J-2 Pools on Marina Lots (21-28) must be located within the interior area as shown on the Building Location Diagrams (See Exhibit 2). To preserve a maritime appearance and in keeping with the overall site development vision, pools may not be located where they are exposed to view from the Marina proper.

3J-3 To preserve the scenic quality of the access road system, pools on Lakefront Lots (29-32) must be located adjacent to the lakefront houses. Screening should include evergreen hedges and other integrated landscaping features that become a part of the overall site landscape. See Building Locations Diagrams (Exhibit 2) for examples.

3J-4 Pools must be designed to complement the architectural components of the residence. Pools must be in-ground. Pool coping may not be higher than the finished principal floor elevation of the residence or 5'-0" above grade. Pool enclosures are not permitted.

3J-5 Pool cabanas will be permitted if compatible with the architectural elements of the residence, including roof, and must be situated within the pool setbacks. Materials should be in harmony with the overall architectural character of the house and may be of high quality fabric with a corrosive resistant internal steel structure.

3K. Porches, Decks, Verandas, and Balconies

3K-1 Raised covered porches are encouraged. Handrails, balustrade systems and/or columns form an integral part of the porch concept. The columns must be made of concrete, composite or climate-suitable wood. Handrails must be made of wood or aluminum and painted. Columns and handrails must be relatively simple and be under-stated rather than ornate.

3K-2 See Building Location Diagrams (Exhibit 2) for location of covered porches at each Lot Type. Exact location of covered porches will vary along the Marina Lots 21-28. Special care should be taken to coordinate the entrance to horizontal boat walkways and entrances to Marina Lots from the Marina side. A minimum of 5'-0" from either edge of the Marina platform to the start of the Marina steps is required.

3K-3 All Lots are encouraged to have a combination of covered porches, balconies and terraces. These harmonious additions will contribute to an animated skyline of shade and shadow. See Building Location Diagrams Exhibit 2 for locations of balcony elements. Exact locations, style and sizes will comply with minimum requirements stated herein.

3K-6 Recommended Options

Each primary residence is encouraged to incorporate porch and balcony elements. Two story porches are recommended on the Marina frontage.

3M. Roofs

3M-1 The roofs of all residences within the community, while perhaps different in material and color, shall have a similarity of form to provide for a homogeneous character. Plain roofs have a recommended minimum slope of 6/12. Roofs having integrated forms such as rooftop ancillary structures, dormers or other roof elements have a recommended minimum slope of 4/12.

3M-2 Roofing with less than a 6/12 slope is recommended only in connections with 3M-1 above as a connection to more dominant themes of the roofing mass. All connecting roofs, i.e., garage to main structure or freestanding garage, etc., shall have a roof with material compatible with the main structure.

3M-3 Roof overhangs form an integral part of the architectural character of the community and should be maximized wherever possible to provide shelter from both the sub-tropical sun and rain showers. In many cases the roof overhangs may incorporate balconies, decks and screened porches. The contemporary “shed” design is not appropriate. Minimum recommended roof overhangs are three feet. See Section 3E on gutters and eaves for rafter articulation recommendations.

3M-4 Roof attachments, whether ornamental or functional such as ornamental ridge caps, weather vanes, oversized fireplace flues, etc., are not only permissible, but encouraged to give an additional scale of detail to the dwellings. On Marina Lots 21-28 ornamental weather vanes are strongly encouraged. Weather vanes are to be visible from the Marina side and to be located above the highest roof ridge line within 25 feet from the rear property line. Weather vane designs should be included in the design submission and the vane for each Lot should be unique.

3M-5 All roof accessories such as vent shacks and roof vents shall be either painted to match the roof color, or accentuated to form a statement. Vents shall be located away from the entry elevations. Flashing shall be copper or lead coated copper, except in the case of metal roofs where it shall be the same material as the roof. Raw aluminum or galvanized flashing is not allowed. While satellite dishes are allowed, they require the ARC approval and must not be visible from the street.

3M-6 Chimneys, along with other projections above roofing surfaces, play a dominant role in defining the building character. Chimney dimensions should be compatible in scale to the

structure. All exposed surfaces of chimneys should be masonry or stucco with a preference for covered flue endings. Metal flues must be completely concealed by a masonry chimney cap.

3M-7 Approved Roof Materials

Standing Seam Metal (aluminum finish)*
Sawn Wood Shingles (Blue ribbon, perfection cedar)

*Please note that two metal roofs side by side, will not be allowed.

3M-9 Prohibited Materials

Asphalt Shingles
Colored, glazed tiles
Barrel tiles

3N. Shutters

3N-1 Window shutters are an integral part of the overall Island aesthetic. Wind protection is required by the Florida Uniform Code. All shutters will be required to meet or exceed the Florida Uniform Code unless other devices are designed to accommodate this requirement or the windows and doors are tested and rated for impact loads.

3N-2 Louvered shutters are preferred, but bevel board and panel shutters are acceptable. In the bevel board style, the joints between boards and the crosspieces should be understated to avoid a rustic look. A very small “V” groove should be used between boards, and all edges of the cross pieces should be chamfered.

3N-3 All shutters shall be operable using traditional hardware, pivots and latches. Louvered shutters can be allowed to tilt from the top or swing open. All shutters must be sized to fit the window and made of ARC-approved materials that are in harmony with the principal residence. Painted aluminum is acceptable for louvered shutters.

3O. Walls/ Fences

3O-1 Walls constructed within the building setbacks have no maximum height requirements other than local code. Walls constructed between the front and rear building setback, but within the side building setback, have a maximum height of 7’-6” above the crown of the adjacent roadway or as otherwise approved in harmony with the adjacent property design. Hard walls are not encouraged. Landscaped elements, including evergreen hedges, ornamental fencing in concept with landscaping and other layered combinations of fencing and landscaping are preferred methods of providing privacy and screening.

3O-2 Walls constructed between the road right-of-way and front building setback shall have a maximum height of 5'-6" above the crown of the adjacent roadway. See Landscape Requirements, section 5, regarding hedges within the initial front setback.

3O-3 Walls constructed between the rear property line and rear building setback line shall have a maximum height of 4'-6" at the Marina Lots 21-28. Trellises or other elements allowing views through such walls are not subject to this height restriction. No wall restrictions apply to rear property lines of Lots 1-20. On Lots 29-32, free standing walls around the pool and/or within 15 feet of the lakefront line are prohibited. Privacy screens constructed around pools and other common elements on Lakefront lots should be comprised of landscaped elements, trellises, pool buildings and other landscape elements.

3O-4 Where interior walls are required to screen pools, a minimum height of 5'-0" must be maintained.

3P. Windows

3P-1 Divided glass windows are encouraged. Wood frame windows are strongly suggested, as is the use of French doors in combination with windows. Windows are encouraged that will provide natural ventilation throughout the premises.

3P-2 Vinyl or aluminum clad wood windows will be permitted, subject to color approval. Aluminum frames will be considered when they closely simulate the character of traditional wood windows.

3P-3 Lightly tinted glass is acceptable only if required to meet energy calculations for the proposed residence. Foil or reflective material is prohibited.

3P-4 Allowable window types include double hung, casement, etc. where they meet local wind conditions and casement type. The use of special shapes is discouraged, but will be considered upon the submission of a complete façade design.

4. Engineering Requirements

4A. Fill Requirements for all Lots

4A-1 Fill must be sufficient to conform to the requirement for property lot grading.

4B. Finished Floor Elevations

4B-1 Minimum finished first floor elevation on all residences shall be eighteen (18) inches above the crown of the adjacent roadway. Maximum finish floor elevation of Marina residences will be approved by the ARC on an individual basis, generally 1 foot above the base floor elevation as set by FEMA, based on site conditions, adjacent structures and overall design theme.

5. Landscape Requirements

Overview

Marsh Island is located in the midst of some of the finest native coastal and indigenous upland vegetation habitats remaining on the Florida coastline.

The goal of the ARC is to provide for the sensitive enhancement of this environment by the encouragement of an on-going planting program which adheres to a naturalistic design approach. Although individualism in design philosophy is encouraged, the overall landscape feel of the community is intended to be unified and cohesive.

5A. Submittal Requirements

5A-1 To insure that the visual appeal of the community is properly preserved and that proposed vegetative improvements are kept consistent for the benefit of all, a comprehensive landscape plan, plant list, and anticipated cost estimate will be required for all residences. The ARC reserves the right to approve or disapprove any such submissions, and may at its sole discretion make suggestions or require modifications.

5A-2 Front yard landscape lighting is required to increase the attractiveness and illumination of the Community at night.

5A-3 The final landscape plan shall be prepared by a registered and ARC approved landscape architect, licensed in the state of Florida, and submitted to the ARC within ninety (90) days prior

to final dwelling occupancy. Two signed and sealed copies of the landscape submittal shall be delivered to the ARC for review and comment.

5A-3 MINIMUM LANDSCAPE BUDGET REQUIREMENTS: The ARC requires a minimum landscape expenditure* for all lots as follows:

- \$45,000 for Marina lots
- \$65,000 for Lakefront and Estate lots

*includes sod and automatic irrigation system but excludes the Landscape Architect fee, decorative earthwork and landscape lighting.

5B. Design Expectations

5B-1 The general landscape design theme for Marsh Island is intended to be lush and tropical, natural and informal, using a rather limited plant palette of mature vegetation to present an established appearance at the time of installation.

5B-2 New plantings should generally be massed in clusters and in seemingly random patterns rather than in overly organized linear configurations. Placement of primary trees and palms should be situated to complement rather than decorate the residence.

5B-3 Common property lines of adjoining residential sites should be planted in such a manner as to be advantageous to each party. Masses of screen plantings should be allowed to vary along property lines and long uninterrupted hedges and clipped borders should be avoided. Palm clusters and vertical canopy trees should be arranged to amplify similar species on adjacent properties, with the combined visual impact by both.

5B-4 Whenever possible, flowering trees, shrubs, groundcovers, and blossoming vines should be introduced into the landscaping plan. Seasonal color beds should be unobtrusive during periods of the year when flowers are not present.

5B-5 All mechanical equipment, air conditioners, swimming pool and spa equipment shall be completely screened from public view. The use of flowering hedges for this purpose is not allowed and either evergreen hedges, masonry walls, wood or metal louvers shall be employed to provide an opaque screen.

5C. Streetscape Buffer Landscape Requirements

5C-1 Traditional street tree plantings, which typically space a limited variety of specie at equal intervals along the right-of-way frontage, should be avoided.

5C-2 Plants should be placed as close to the street as practical to create a sense of separation between the road and the main residence while providing visual depth to each site.

5C-3 To provide additional canopy vegetation along the common roadway, each residential landscape design must include at least one live oak tree and at least two large caliper specimen

trees from the approved list. See appendix for list of approved trees and plants. It is anticipated that the street along the lakefront will be extremely limited in variety, forming an overall ring of identical specimen trees punctuated by live oaks. This interplay between oaks and sub-tropical specimen will unify the relationship between sub-tropical and old southern traditional landscaping.

5C-4 To amplify the visual impact and provide additional vertical movement to the streetscape buffer planting program, the introduction of decorative grading is encouraged on each home site within the entrance zone.

5C-5 A landscape wall shall be located within the front 8'-0" setback area line to a height of between 2'-6" and 4'-0" above grade at the right of way. These walls are intended to blend the roadway into the residential entrance system, creating a sense of landscape harmony and community. Design motifs are to be developed so as to be harmonious with the principal house design. These walls within the initial setback should be an integral part of the overall landscaping plan. Flowering hedges and vines are desirable to soften the effect of the higher evergreen hedge. It is intended that these landscaped walls and treatments will contribute to the common design of the roadway system, and extend the lush sub-tropical landscaping into the home sites.

An example would be as follows:

An evergreen hedge, between 3'-6" and 4'-6" in height would be installed 5'-0" from the front property line and on either side of the motor court entrance. A flowering hedge or planting scheme would be set between the property line and the evergreen hedge. This combination would add richness and color to the roadway, creating a harmonious feeling as one drives around the lakefront. Also, the taller evergreen hedge would create a partial foil to the gardens and trellis occupying the first 25 feet of site frontage.

5D. Flowering Tree

5D-1 Flowering trees are encouraged within the landscaping of each residence, and shall be utilized in such a manner as to provide visual interest and design reinforcement to the primary canopy vegetation located throughout the remainder of the installation.

5E. Accent Tree and Specimen Shrub

5E-1 Smaller accent trees, specimen shrubs, and free standing palm elements are encouraged, as may be appropriate, to complement the design intent of each residential landscape plan.

5F. Flowering Hedge

5F-1 Flowering hedges will generally be used as a means of visual reinforcement and design interest within the landscaping where maximum buffering is of less concern. The use of such

hedges shall be limited to full sun exposures and trimmed in such a manner as to promote maximum blooming. At the initial setback, a flowering hedge will be one of the elements that may be used in connection with the evergreen hedge as an initial landscape buffer.

5F-2 Flowering hedges shall have an initial established appearance at the time of planting and installed at such a spacing as to become solid within six months after installation.

5G. Evergreen Hedge

5G-1 Unlike flowering hedges that may be used for accent or design focus, evergreen hedges should be used in a supporting and primary screening role. They should be employed as the understated element of the design, rather than the dominant theme of any installation, and should be used in concert with flowering hedges and plantings.

5G-2 Evergreen hedges shall have an initial established appearance at the time of planting and should be installed at such a spacing as to become opaque within six months after installation.

5H. Shrub and Groundcover

5H-1 Foundation shrubs and related groundcover beds will be provided in conjunction with the remainder of each residential landscape installation and should be provided in such a manner as to unify the design.

5H-2 In general, larger quantities of a limited palette of shrubs and groundcovers will be considered more desirable than a broad mixture of plants used in limited quantities each. Vegetation shall be installed reasonably close together, according to variety, to form mass bedding areas instead of a series of individual plantings.

5I. Flowering Vine

5I-1 The introduction and prolific use of flowering vines within each residential landscape program will be considered an asset for the entire community. To promote blooming, care should be made to insure that such vines are placed in sunny exposures.

5J. Evergreen Vine

5J-1 Non-flowering vines may be used, as may be appropriate, in both a climbing application or as a solid groundcover.

5K. Sod and Lawns

5K-1 Unless specific ARC approval is obtained, all lawn turf grass used throughout the residential portions of the community shall be St. Augustine “Floritam” *Stenotaphrum secundatum*.

5K-2 Unless specific ARC approval is obtained, no more than fifty percent (50%) of any residential site (exclusive of building coverage and related impervious surfaces) may be planted in grass. All lawns shall be installed as solid sod and no seeding or sprigging will be permitted.

6. Construction Standards

6A. Start of Construction

6A-1 No Lot grading or placement of portable toilets will be permitted until all required governmental permits are obtained and formal written approval of the ARC has been granted.

6B. Portable Toilets

6B-1 Prior to commencing work, a portable toilet must be placed on the job site and in a manner that will least disturb other residences and other construction. Temporary fencing must be installed to screen toilet from street and neighboring properties.

6C. Construction Traffic

6C-1 In general, construction vehicles are not to be parked on vacant lots in the community except the one under construction. However, if the size of the lot or its location make this impossible, the lot owner may request permission from the ARC. If permission is granted, the lot must be restored to its original condition when construction is completed.

6D. Construction Hours

6D-1 The construction working hours will be from Monday through Friday, 7:30 a.m. to 5:00 p.m., and Saturdays from 8:00 a.m. to 2:00 p.m. except on nationally recognized holidays. These hours are subject to Rules and Regulations as published by the ARC from time to time. No work is permitted on Sundays.

6E. Site Clean Up

6E-1 All construction dumpsters must be covered and emptied on a regular basis. The builder is responsible for trash that blows off the site and shall retrieve such trash immediately. All trash stockpiled for removal shall be located in rear of the residence until removed. There will be no stockpiling or dumping on adjacent Lots or on streets. Trash remaining after the completion of construction will be removed by the property manager and the cost associated with such removal will be billed to the responsible contractor. During the Hurricane season, all loose construction materials must be removed or secured to prevent damage to adjoining properties.

6F. Vehicles and Equipment

6F-1 No vehicles (trucks, vans, cars, etc.) or construction personnel may remain in the community overnight. Construction equipment may be left on the site while needed, but must not be kept on the street, unless the Association has granted prior permission.

6F-2 Job trailers are exempted from restriction 6F-1 above, but must remain on the Lot under construction and not in Common Areas.

6G. Personnel

6G-1 Only bona fide workers are allowed on the property and such workers are required to exit the property upon completion of their work. Spouses may drive workers to and from the site, but must not remain on the property unless they are actual employees of the subcontractor. For safety reasons, children are not permitted on the job site. Workers are required to wear shirts at all times. No alcoholic beverages are permitted on the property. Contractor personnel will not be permitted to bring pets on property.

6H. Construction Utilities

6H-1 Contractors must use only the utilities provided to the Lot on which they are working.

6I. Contractor Contract

6I-1 A 24-hour emergency telephone number must be kept on file. Contact the property manager or dockmaster to provide a list for all contractors working at Marsh Island.

7. Processes and Procedures

7A. Architectural Review Committee/ Process

7A-1 Purpose

The primary role of the Architectural Review Committee is to foster harmony among neighboring residences and conformance with Marsh Island design objectives. The ARC will endeavor to administer regulations in an objective and impartial manner and will maintain sensitivity to the individual aspects of design. All construction by Owners must be approved by the ARC.

The ARC requires individual Owners to arrange a meeting prior to the initial design submission. During this preliminary meeting, design goals of the ARC and the individual Owner can be discussed. This meeting will allow the Owner and the ARC to clearly understand the issues that should be addressed in design submissions as well as any clarifications or questions that may arise. No construction shall be permitted without written approval from the ARC. This review process applies to any and all exterior home or property modifications and additions or alterations, as well as new construction.

Services of the ARC include:

- A. Explanation and interpretation of the Design Criteria & Guideline.
- B. Access to samples, displays and pictorial reviews exhibiting acceptable architectural solutions.
- C. Review of plans and designs for compatibility with the overall architectural vision of the community.

7A-2 Enforcement

Should an architectural violation occur, the ARC has the right to injunctive relief to require the Owner to stop, remove and /or alter any improvement in a manner which complies with the standards established by the ARC.

7A-3 Limitation of Responsibilities

The ARC does not assume responsibility for the following:

- A. The structural adequacy, capacity or safety features of the proposed improvement or structure.
- B. Soil erosion, non-compactable or unstable soil conditions.
- C. Compliance with any or all building codes, safety requirements, governmental laws, regulations or ordinances.
- D. Performance or quality of work of any contractor.

7A-4 Meetings of the ARC

The ARC will meet as requests are received. The ARC will make every effort to respond to requests for approval within thirty (30) days of the date the request is received by the ARC. All incomplete submissions will be returned without being reviewed.

7A-5 Minutes of Meetings

All decisions of the ARC will be contained in minutes taken at the ARC meetings. Although Owners will not be present at these meetings, contained minutes of each meeting will be available upon request. The ARC minutes will include decisions of the ARC and the rationale behind those decisions. Plans and specifications will be retained by the ARC.

7A-6 Committee Members

The ARC shall consist of individuals appointed by the Board of Directors.

7A-7 Review Fees and Deposit

New home construction fees:

- Plan Review Fee - \$1500
- Contractor's Deposit - \$7500
- Owner's Deposit - \$10,000

Exterior Alterations and/or Additions (including but not limited to: new pools, patios, driveways, terraces, re-roofing, extensive landscape/hardscape changes):

- Plan Review Fee - \$500
- Contractor's Deposit - \$2000
- Owner's Deposit - \$3000

The owner and contractor deposits are for compliance or damages. They are refundable and shall be held by the ARC until satisfactory completion of all construction, including hardscape and landscape and will not accumulate interest. In the event damage to neighboring property, roads or curbs occurs, or if the construction deviates from the approved plans, or if the construction site, after warning is given, continues to be kept in a disorderly fashion, the deposit may be used for repair or correction and therefore forfeited in part or in whole to the ARC. Deposits may also be forfeited in part or in whole for failure to comply with approved plans or other violations of the Architectural Standards. The ARC will make this decision at their sole and absolute discretion.

Prior to the return of any deposits, the Owner (or his Architect) may be required to submit an as-built survey of the improvement prepared by a state certified land surveyor to determine the setbacks, area, coverage, volume, heights, elevations, and other dimensional information. The surveyor shall be selected by the ARC, and the expense of survey shall be paid by the Owner.

7A-8 Construction Inspections

Periodic inspections may be made by the ARC while construction is in progress to determine compliance with the approved architectural and landscape plans and specifications.

7A-9 Design Document Changes

The Owner must notify the ARC prior to making any changes to the approved plans. A letter with applicable support data (as required) must be submitted to the ARC for the file. Any major deviations (as solely determined by the ARC) may require full ARC approval prior to commencement of changes. Upon completion, an as-built set of drawings will be required.

7A-10 Appeal

If an application has been denied, or the approval is subject to conditions which the Owner feels are unacceptable, the Owner may request a hearing before the ARC to justify his/her position.

The ARC will review its decision and notify the Owner of its final decision within ten (10) days of the hearing.

7A-11 Waiver and Additional Requirements

These Design Criteria & Guidelines have been adopted to assist the Owners in connection with the architectural approval process. However, these are merely guidelines, and the ARC may waive any of the requirements set forth herein.

7B. Architectural Review Procedures

The following is an outline of the procedures for plan submissions. For drawing description, please refer to: Architectural Documents (Section 7C).

7B-1 Review the Relevant Documents

1. Lot Purchase Agreement
2. These Design Criteria & Guidelines
3. The Declaration of Covenants, Conditions, Reservations and Restrictions

7B-2 Retain Professional Design Consultants and Florida Licensed Building Contractor

Selection of a Florida registered architect and landscape architect and a Florida licensed building contractor is required. Have your builder and architects read and acquaint themselves with these Design Criteria & Guidelines.

Discuss your requirements and have the architects produce sketches illustrating the design concept and showing how the residence will be situated on the Lot. These drawings will be used during the initial review.

7B-3 Preliminary Meeting (See Section 7A-1)

7B-4 Initial Review

Preliminary plans (four sets) showing critical dimensions consisting of the following:

- Site Plan indicating the location of all proposed improvements on the Lot.
- Preliminary floor plans signed and sealed by a Florida registered architect.
- Preliminary exterior elevations (all sides) signed and sealed by a Florida registered architect.
- Preliminary building section(s).
- Conceptual landscape plan.

The ARC will review the application and design documents ~~within the thirty (30) days~~ and return one set of plans to the Owner with the appropriate comments.

7B-5 Major Review

1. The Owner must submit the final construction plans (three sets signed and sealed by Florida license architects):
 - a. Final floor plans.
 - b. Final exterior elevations: specifications, materials, color chips.
 - c. Roofs: structure, materials, product photos (or samples).
 - d. Fascia and trim: section details, materials, color chips.
 - e. Preliminary Landscape Plan: tree location (size and quality materials), irrigation plan showing location of control valves.
 - f. Exterior and garage doors: specifications, materials, product photos, color chips.
 - g. Patios, decks, balconies, verandas, porches: specifications, materials, color chips.
 - h. Fences/ walls: design details, materials, color chips.
 - i. Mechanical equipment: location, screening details.
 - j. Exterior lighting details: specifications, product photos.
 - k. Driveways: materials, finish, color chips.
 - l. Accessory structures such as playhouses, tool sheds, dog houses, etc. are not permitted unless approved in advance by the ARC.
2. The ARC will review all design documents and return one set of plans to the Owner with approval and/or appropriate comments.

7B-6 Submission of Plans to Building Department

Following Major Review and approval, the Owner may submit approved plans to the Building Department, or other agencies having jurisdiction for required permits.

7B-7 Construction Commencement and Completion

Upon receipt of final plan approval and building permits, the Owner may commence construction. Any construction commenced upon a lot must be diligently pursued to completion within a reasonable time and without delay and in strict conformance with the approved plans, drawings and specifications. It is expected that a project will be completed within 16 months of commencement. If, due to unforeseen circumstances, a project cannot be completed within 16 months the lot owner must apply to the ARC for an extension.

7B-8 Final Review

The Owner must submit two sets of the final landscape plans for approval within 90 days prior to final occupancy.

The ARC will review the plans and return one set of plans to the Owner with the appropriate comments.

7B-9 Survey/ Certificate of Occupancy

Upon completion of construction, the following shall be submitted to the ARC:

1. Final survey certified by surveyor.
2. As-Built set of drawings.
3. Certificate of occupancy from the County.

7B-10 Inspection

The ARC will perform periodic reviews to ensure compliance with the guidelines and approved plans as follows:

1. Prior to any excavating or filling on a Lot for construction, the Owner may be asked to provide a string stakeout of the Lot lines and building lines. The ARC will review the string stakeout for conformity to ARC approved plans and will approve or disapprove the commencement of construction.
2. At such time as the Owner has completed all improvements, including landscaping, in accordance with the plans and specifications approved by the ARC, the Owner shall request a final review by the ARC.
3. Upon certification by the ARC that all improvements have been satisfactorily completed, including landscaping, in accordance with the approved plans and specifications, the ARC will issue a final approval certificate.

7C. Architectural Documents

The following is a list of architectural drawings and required information.

7C-1 Site Plan

Scale in size appropriate to show detail, but not less than 1 inch = 20 feet.

Required information:

1. Property lines/ set backs with dimensions
2. Driveways, sidewalks, walkways, fences and walls, access street(s).
3. Culverts and swales.
4. Drainage Plan
5. Paving Plan
6. Foundation outline, roof drip line and entry areas.
7. Pools, decks, patios
8. Existing grade/ finished floor elevations
9. North arrow
10. Mailbox location

7C-2 Foundation Plans

Scale in size appropriate to show detail.

7C-3 Floor Plans

Scale in size appropriate to show detail.

7C-4 Roof Plans

Scale in size appropriate to show detail.

7C-5 Exterior Elevations

Scale in size appropriate to show detail.

Required information:

Sides, rear and front elevations.

7C-6 Building Sections

Scale in size appropriate to show detail.

Required information:

1. Detail wall sections.
2. Detail roof sections, pitch, type.

7C-7 Exterior Colors/ Finishes/ Materials

Specifications/ Material selection details showing all materials to be included.

Required information:

1. Manufacturers/ Models (if applicable)
2. Product samples/ photos
3. Color chips, color name, manufacturer, manufacture's color number (colors must be present no later than 60 days prior to painting of the house).

7C-8 Landscape Plans

Indicate the Lot number, location, and name of client along with the name, address, and phone number of the licensed landscape architect preparing the documents.

Sheet Size 24" x 36" preferred. **Scale-** Either 1/8"=1'-U"=10, -U".

Perimeter Areas Reflect all adjacent site conditions and surrounding roadways, lakes, and pertinent features which may affect the subject property.

Hardscape Indicate all proposed vehicular and pedestrian circulation treatments, swimming pool location and configuration, miscellaneous amenity elements, garden features, and permanent site furnishings, which may affect the use of the site.

Utility Elements Show all air conditioner equipment locations, exposed utility meters, garbage areas, LP gas tank, pool equipment and any service or utility elements which may require landscape treatment or buffer screening.

Decorative Gardening Indicate general existing grades and all proposed decorative grading (earth berming) at one foot intervals.

Proposed Vegetation Provide a comprehensive landscape layout for all trees, palms, shrubs, groundcovers, vines, and sod, which are proposed throughout the site, Indicate specific Street Tree Locations.

Plant List Identify all proposed vegetation with a plant list that reflects the scientific and accepted common name, height, spread, caliper, or size at time of installation as well as any necessary remarks which may be required to clearly portray the technical needs for bid pricing, design review, and/ or final installation purposes.

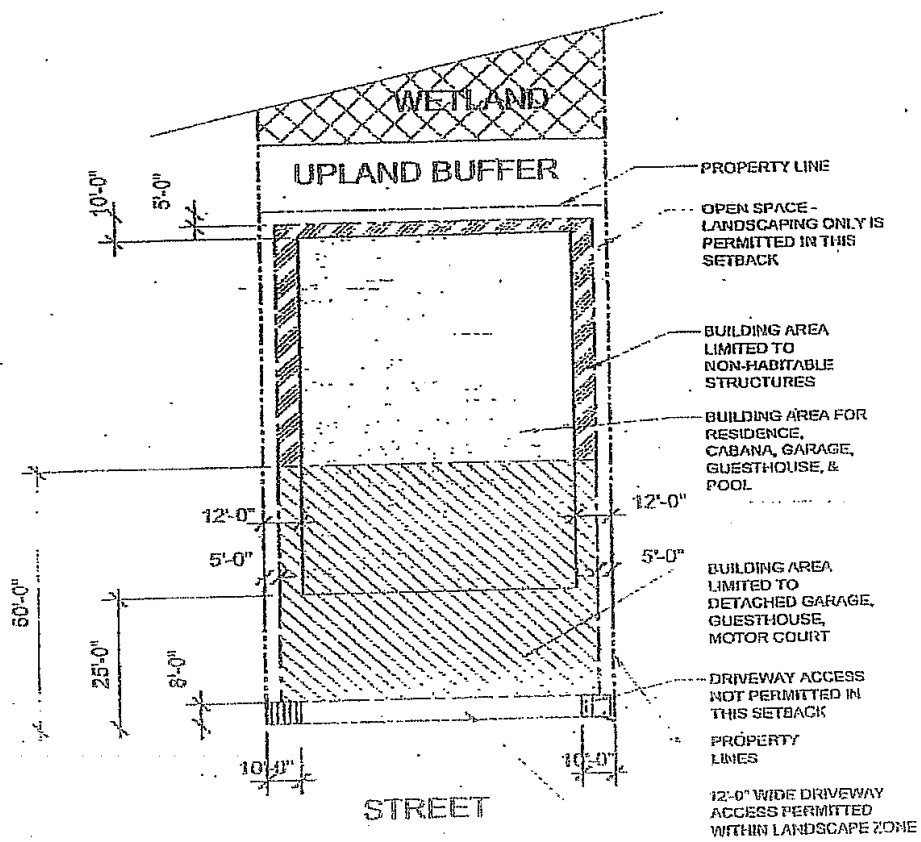
7C-9 Final Survey

Letter from architect, engineer or surveyor stating that the completed residence is in conformance with the Design Criteria & Guidelines and approved plans or a final survey which contains:

- Lot corners
- Dwelling corners
- Driveways and driveway aprons
- Sidewalks and walkways, pools, decks, patios
- Fences, easements and rights-of-way elevations for finished ground floor, sidewalks, swales, and driveway aprons.

EXHIBIT 1 - BUILDING SET BACK DIAGRAMS

DIAGRAM "A"

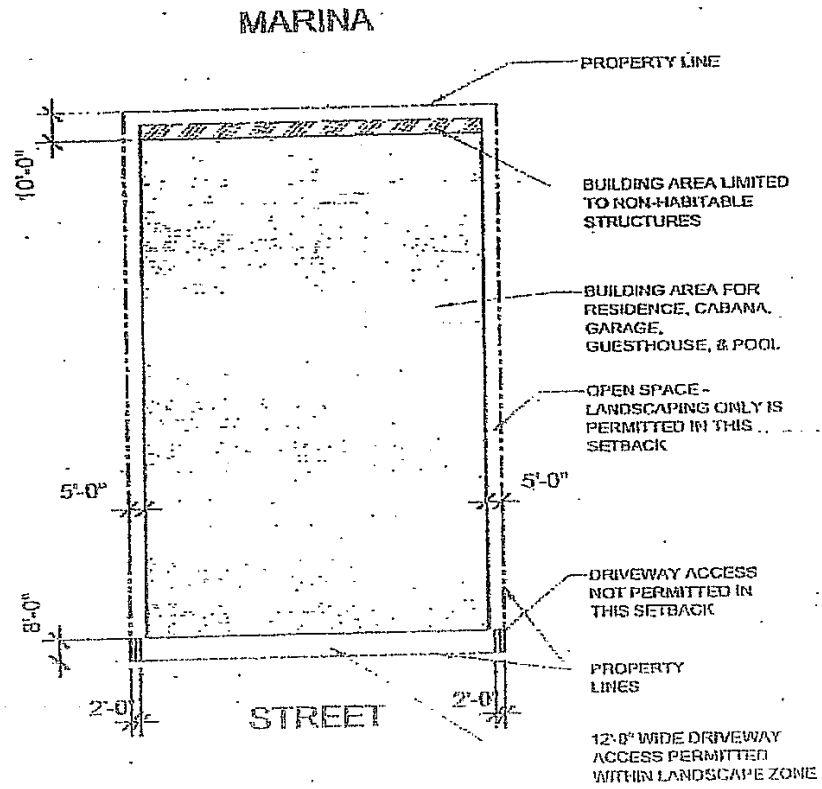


1. 5'-0" SETBACK FROM TOP OF BANK OR UPLAND BUFFER FOR POOL DECKS, ACCESSORY NON-HABITABLE STRUCTURES ON ALL LOTS
2. FRONT 50'-0" LIMITED TO DETACHED GARAGES AND GUEST HOUSES. IF MAIN HOUSE IS CONSTRUCTED IN FRONT 50', IT WILL ADHERE TO 12'-0" SIDE AND 25'-0" FRONT SETBACKS
3. 8'-0" FRONT SETBACK APPLIES ONLY TO SIDE AND REAR LOADED GARAGES. FRONT LOADED GARAGES WILL ADHERE TO 25'-0" FRONT SETBACK

**WATERFRONT LOTS 1 - 20
SETBACK DIAGRAM A**

EXHIBIT 1

DIAGRAM "B"

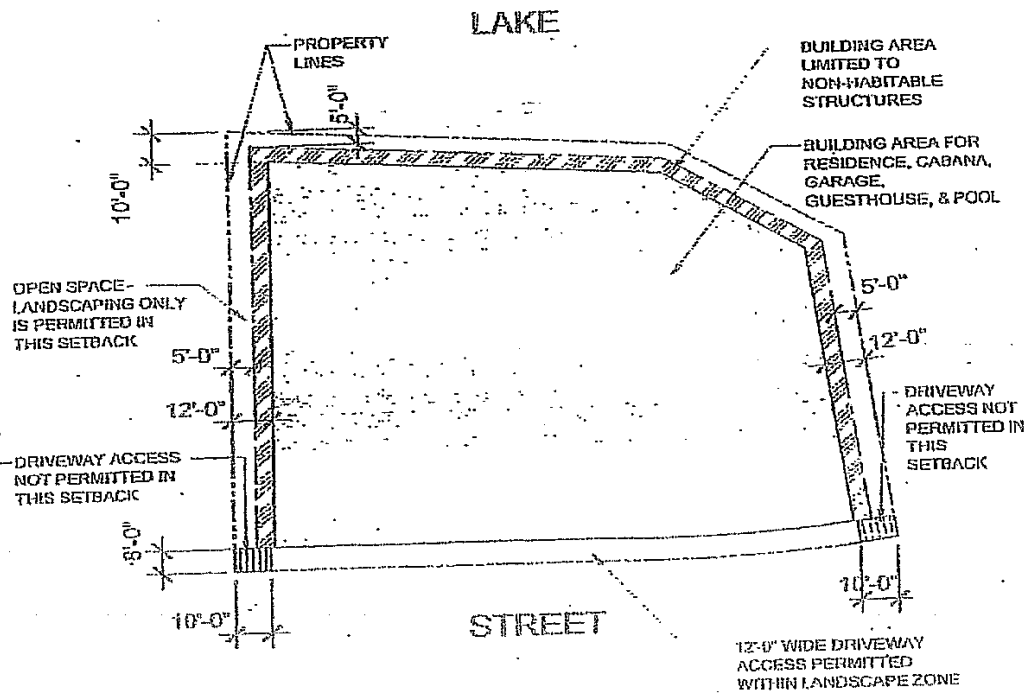


1. 5'-0" SETBACK FROM REAR LOT LINE FOR POOL DECKS, ACCESSORY NON-HABITABLE STRUCTURES ON ALL LOTS
2. SIDE YARD SETBACK MAY BE ZERO (0) IF ADJACENT STRUCTURE IS LOCATED 10'-0" OR GREATER FROM THE SIDE PROPERTY LINE

**MARINA LOTS 21 - 28
SETBACK DIAGRAM B**

EXHIBIT 1

DIAGRAM "C"



1. 5'-0" SETBACK FROM REAR AND SIDE LOT LINES FOR POOL, DECKS, ACCESSORY NON-HABITABLE STRUCTURES ON ALL LOTS

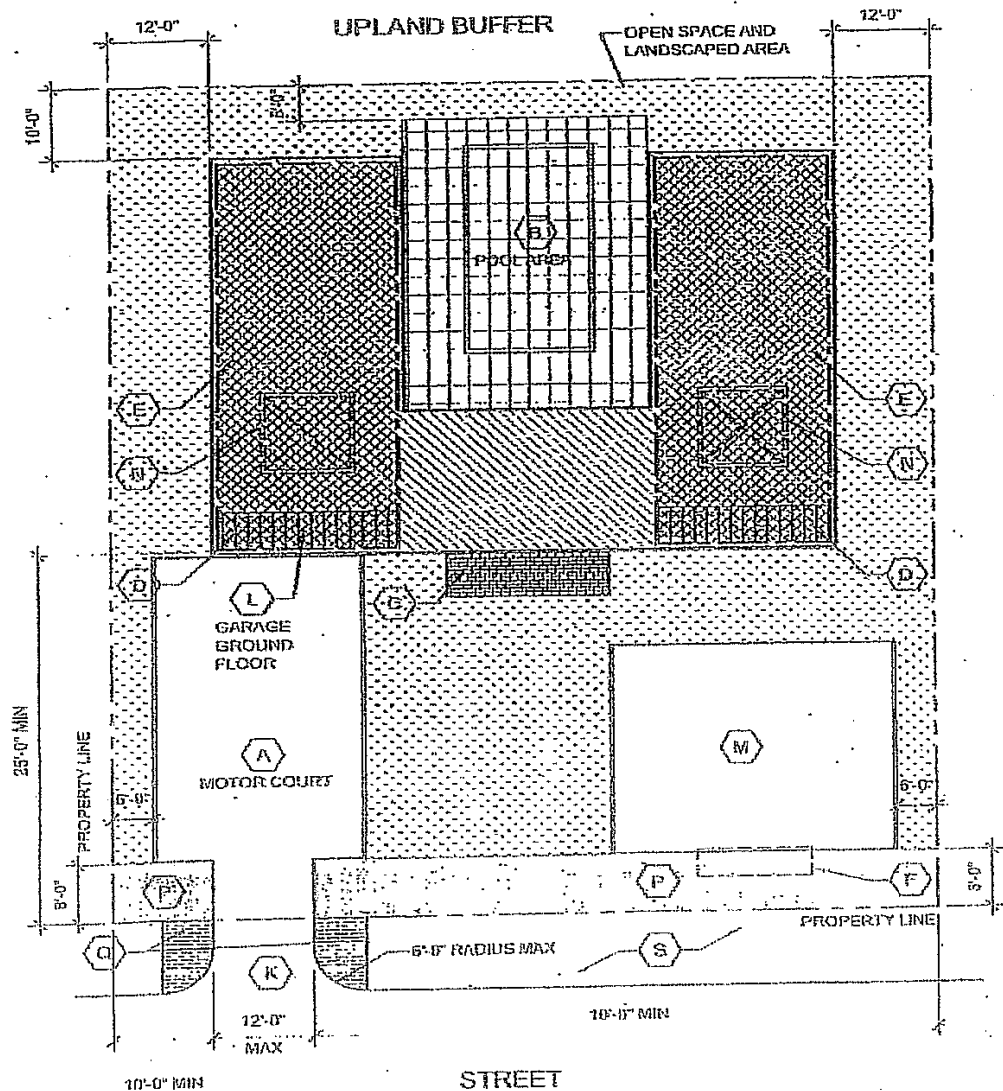
**LAKEFRONT LOTS 29 - 32
SETBACK DIAGRAM C**

Exhibit 2- Building Location Diagrams Legend

- A.** Special Surfaces apply to the area of motor court that is visible from the roadway. See Section 3B.
- B.** Building area for pools, decks and patios. A required wall is shown at property line to screen pool from adjacent property. All pools are to be screened from marina views.
- C.** Raised covered porch element, exact location to be coordinated with building design and marina pier structure.
- D.** Area of 2nd floor porch and or terrace element. Roof top ancillary structure should be higher than this level.
- E.** Area of required second floor area is 80 percent (maximum) of lower floor square footage.
- F.** Front veranda/ balcony feature at second floor.
- G.** Setback area between two double height floor forms. Maximum area allowable is 40 percent.
- H.** Access easement and building area for walls, hedges, and landscaping between marina and rear yard. Coordinate location with marina structure. Walls to be a maximum height as described in landscaping section.
- I.** Required area of pool screening element. See Section 3J for additional information.
- J.** Required entrance motor court wall and landscape. See Section 3O. Applies to Marina Lots only.
- K.** 12-foot wide maximum driveway access. See Section 3B.
- L.** Free standing garage. See Section 3C.
- M.** Free standing guesthouse. See Section 3C.
- N.** Roof top ancillary structures. See Section 3L.
- P.** Streetscape buffer zone. See Section 5C.
- Q.** Area limited to mailbox.
- R.** Gazebo, cabana.
- S.** Road right of way and utility easement zone.

Exhibit 2

DIAGRAM "W-1"

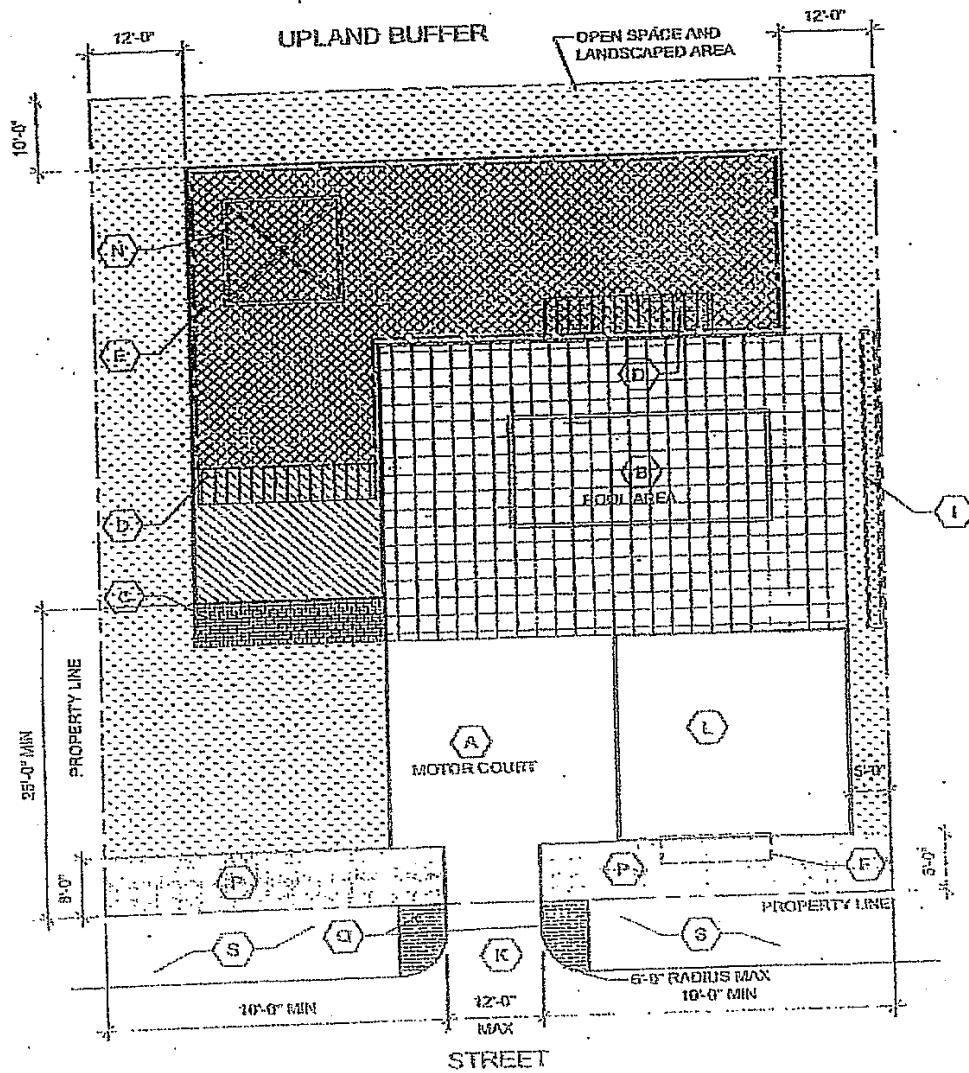


WATERFRONT LOTS 1 - 20
BUILDING LOCATION DIAGRAM W-1

NOTE: DIAGRAM IS FOR ILLUSTRATIVE PURPOSE ONLY.

Exhibit 2

DIAGRAM "W-2"

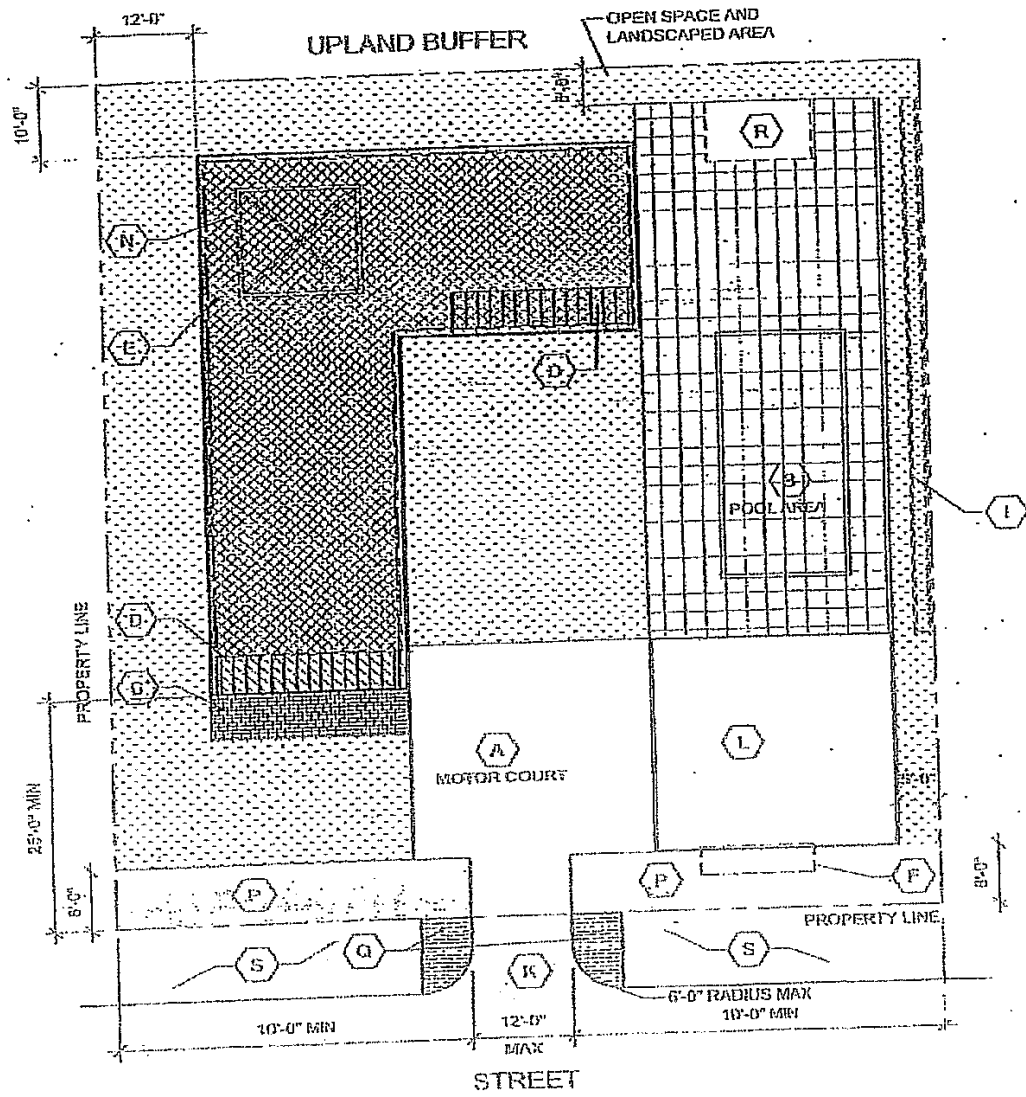


**WATERFRONT LOTS 1 - 20
BUILDING LOCATION DIAGRAM W-2**

NOTE: DIAGRAM IS FOR ILLUSTRATIVE PURPOSE ONLY.

Exhibit 2

DIAGRAM "W-3"

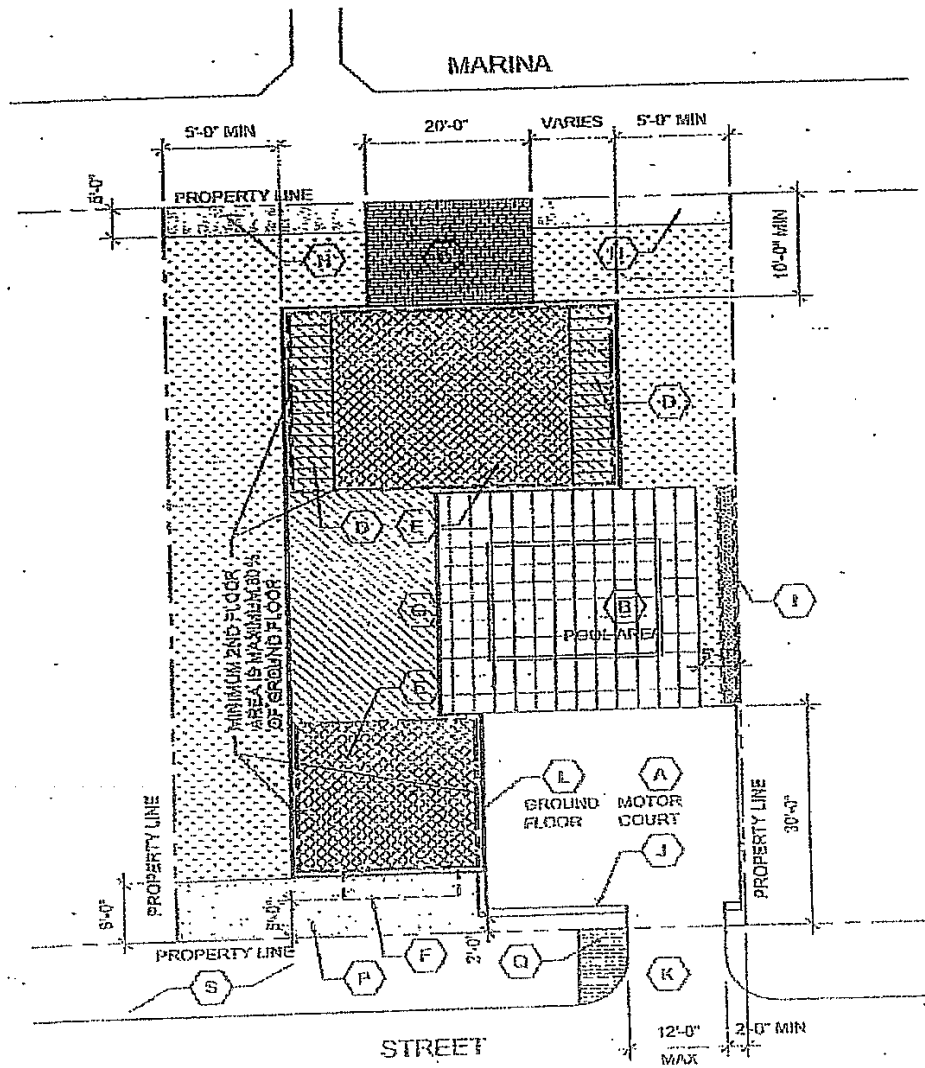


WATERFRONT LOTS 1 - 20
BUILDING LOCATION DIAGRAM W-3

NOTE: DIAGRAM IS FOR ILLUSTRATIVE PURPOSE ONLY.

Exhibit 2

DIAGRAM "M-1"

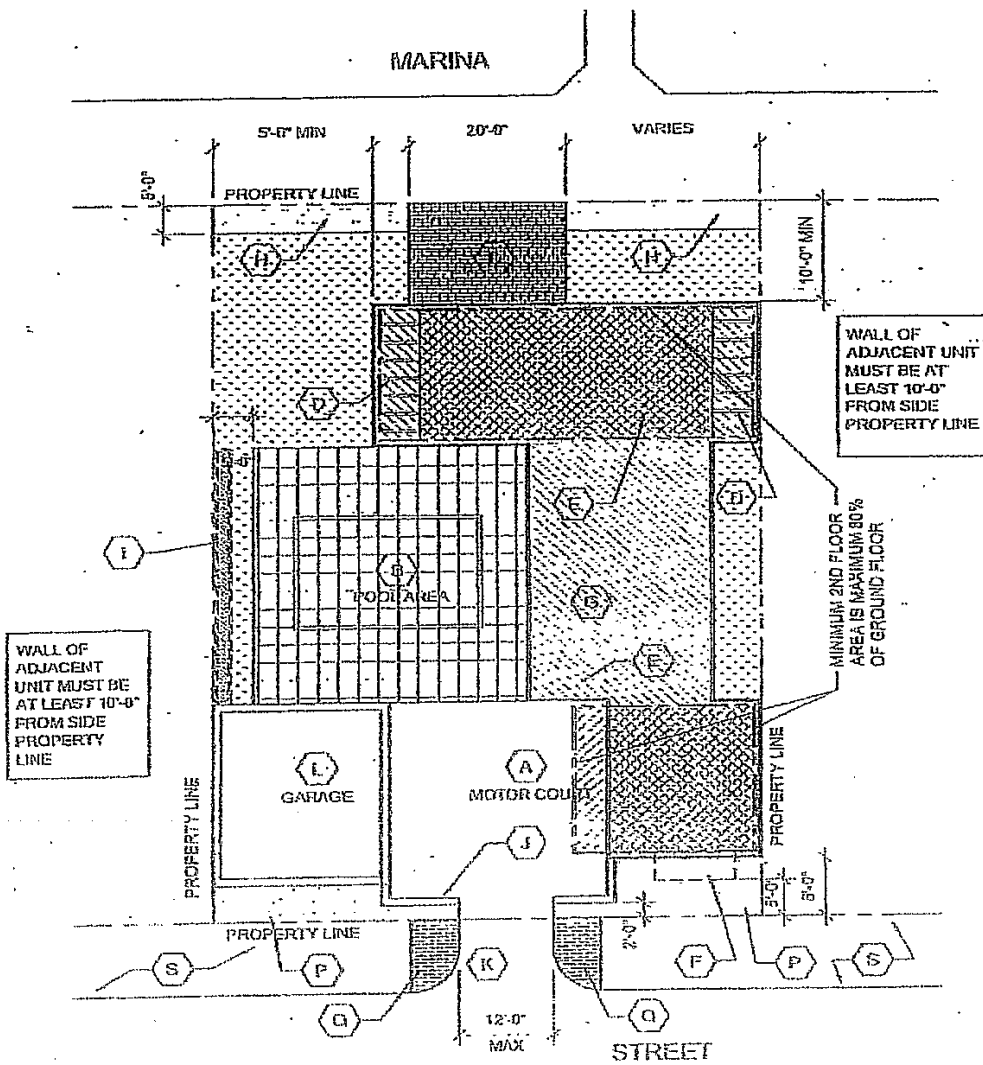


MARINA LOTS 21 - 28
BUILDING LOCATION DIAGRAM M-1

NOTE: DIAGRAM IS FOR ILLUSTRATIVE PURPOSE ONLY.

Exhibit 2

DIAGRAM "M-3"

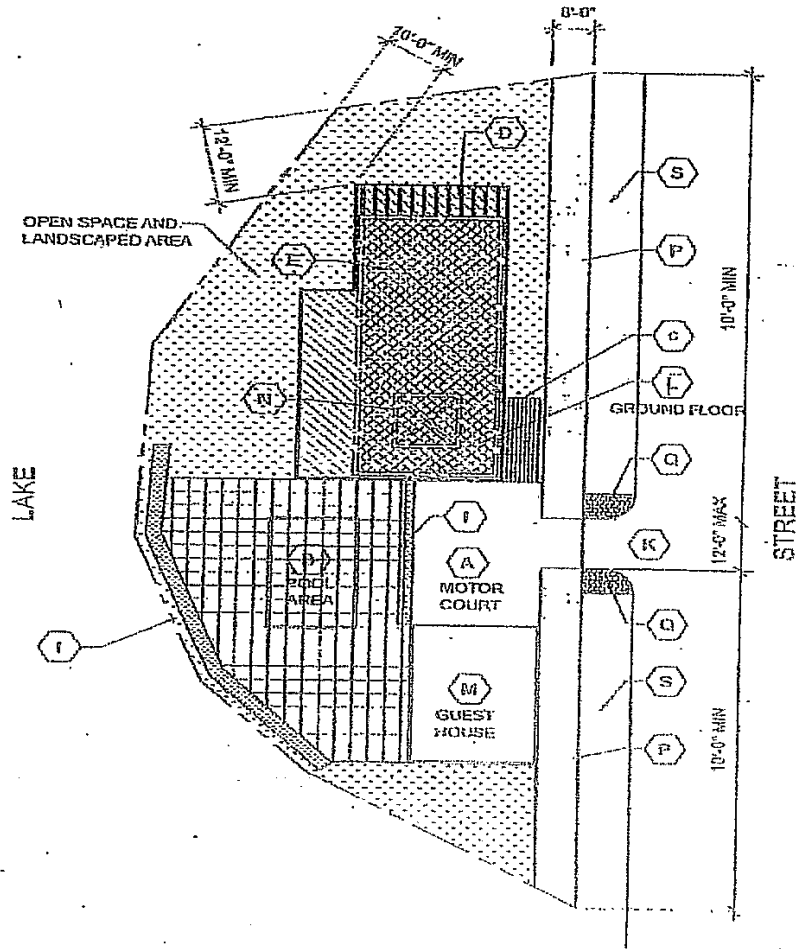


MARINA LOTS 21 - 28 W/ GARAGE
BUILDING LOCATION DIAGRAM M-3

NOTE: DIAGRAM IS FOR ILLUSTRATIVE PURPOSE ONLY.

Exhibit 2

DIAGRAM "L-1"



LAKEFRONT LOTS 29-32
BUILDING LOCATION DIAGRAM L-1

NOTE: DIAGRAM IS FOR ILLUSTRATIVE PURPOSE ONLY.

Exhibit 3 - Recommended Plant List

1. REQUIRED SOD IN THE VERGE (STREET RIGHT-OF-WAY)

Stenotaphrum secundatum St. Augustine 'Floratum'
 Sod shall be installed solidly; seeding or sprigging is not permitted.

2. LARGE CANOPY TREES

Mandala grandiflora Southern Magnolia
Quercus virginia Live Oak

3. MID-SIZE CANOPY TREES

Eriobotrya japonica Loquat
Ilex cassine Dahoon Holly
Ilex opaca 'East Palatka' East Palatka Holly
Ilex vomitoria 'pendula' Weeping Yaupon Holly
Ilex vomitoria Yaupon Holly
Myrica cerifera Wax Myrtle Tree
Persea borbonia Red Bay
Podocarpus gracilior Weeping Podocarpus
Quercus geminata Sand Live Oak

4. SMALL CANOPY TREES

Citrus spp. Citrus
*Eugenia foetida** Spanish Stopper
Ligustrum lucidum Ligustrum
*Myricanthes fragrans** Simpson Stopper
Psidium cattleianum Cattleya Guava
 *Can be used as large shrub forms.

5. FLOWERING TREES AND STANDARDS

Bauhinia spp. Orchid Tree
Callistemon rigidus Upright bottle Brush
Cassia beariana Cassia
Feijoa sellowiana Pineapple Guava
Hibiscus rosa-sinensis Tree Hibiscus
Jacaranda acutifolia Jacaranda
Murraya exotica Chalcas
Nerium oleander 'standard' Oleander standard
Peltophorum inermis Yellow Poinciana
Raphiolepis 'Majestic Beauty' Indian Hawthorne standard
Tabebuia argentea Yellow Tabebuia
Tabebuia pallida Pink Tabebuia

6. SINGLE TRUNK PALMS

Arecastrum romanzoffianum Queen Palm
*Phoenix canariensis** Canary Island Date Palm
Phoenix dactylifera 'Medjool' Medjool Date Palm
Sabal palmetto Cabbage Palm
Washingtonia robusta Washington Palm

*Needles are poisonous if broken off in skin

7. MULTISTEM PALMS

- Chamaerops humilis European Fan Palm
- Paurotis wrightii Everglades Thatch
- Phoenix reclinata* Senegal Date Palm
- Phoenix spp.* Multi Trunk Phoenix
- Strelitzia nicholai White Bird of Paradise

*Needles are poisonous if broken off in skin.

8. UNDERSTORY PALMS

- Chamaerops humilis European Fan Palm
- Livistona chinensis Chinese Fan Palm
- Phoenix roebelinii Pygmy Date Palm

9. SHRUBS AND GROUND COVER

- Alpinia spp. Shell Ginger
- Coccoloba uvifera Seagrape**
- Cortaderia selloana Pampas Grass
- Crinum asiaticum Crinum Lily
- Crinum americanum Florida Crinum
- Cuphea hyssopifolia Mexican Heather
- Cycas revolta King Sago Palm
- Dipladena splendens Dwarf Mandeville
- Galphimia glauca Thryallis
- Gardenia jasminoides Gardenia
- Hemerocallis spp. Daylily
- Ilex cornuta Cornuta Holly
- Ilex Nelle R. Stevens Nelle Stevens Holly
- Ilex vomitoria 'Nana' Dwarf Yaupon Holly
- Ilex spp. Chinese Holly
- Jasminum simplicifolium Wax Jasmine**
- Liriope spp. Lily-Turf
- Morea iridoides White African Iris

- Myrsine guianensis Myrsine
- Ophiopogon japonicus Mondo Grass
- Philodendron sellooum Philodendron
- Pittosporum spp. Pittosporum
- Podocarpus spp. Podocarpus
- Serenoa repens Saw Palmetto
- Tulbaghia violacea Society Garlic
- Vinca minor Periwinkle
- Zamia floridana Coontie
- Zamia furfuracea Cardboard Palm
- Agapanthus africanus Lily of the Nile
- Trachelospermum jasminoides 'Minima' . . . Dwarf Confederate Jasmine

10. HEDGES (WITH SMALL FLOWERS)

- Ilex spp. Holly
- Ligustrum spp. Wax Privet
- Podocarpus spp. Podocarpus
- Viburnum spp. Viburnum

11. FLOWERING SHRUBS

- Duranta repens (berries are poisonous) . . . Golden Dendrobium
- Evolvulus glomeratus Blue Daze
- Hibiscus rosa sinensis Hibiscus**
- Ixora spp. Ixora**
- Lantana spp. Lantana
- Nerium oleander* Nerium Oleander
- Nerium oleander 'Dwarf'* Dwarf Oleander
- Pentas lanceolata Pentas
- Plumbago capensis Plumbago
- Raphiolepis indica 'Alba' White India Hawthorn

*Recognized as poisonous plant **Susceptible to freezing

12. FLOWERING VINES

Allamanda cathartica	.....	Allamanda
Bougainvillea spp.	.....	Bougainvillea
Grewia caffra	.....	Lavender Star Flower
Gelsemium sempervirens	.....	Carolina Yellow Jasmine
Mandevilla sanderi	.....	Pink Trumpet Flower
Pandorea ricasoliana	.....	Pandorea
Pyracantha coccinea	.....	Fire Thorn
Pyrostegia ignea	.....	Flamevine
Rosa spp. 'Don Juan'	.....	Don Juan Climber
Stephanotis	.....	Bridal's Wreath
Senecio confuses	.....	Mexican Flame Vine
Thunbergia grandiflora	.....	Sky Vine
Thunbergia grandiflora 'White'	.....	White Thunbergia
Trachelospermum jasminoides	.....	Confederate Jasmine

13. VINES (WITH SMALL FLOWERS)

Ficus pumila (repens)	.....	Creeping Fig
Hedera helix	.....	English Ivy

14. PLANTS WHOSE USE IS DISCOURAGED

Casuarina equisetifolia	.....	Australian Pine
Ficus spp.	.....	Cuban laurel
Melaleuca leucadendron	.....	Punk Tree
Melia azedarach	.....	Chinaberry
Sapium sebiferum	.....	Popcorn Tree or Chinese Tallow
Schinus terebenthifolius	.....	Brazilian Pepper
All plants considered "invader species"		

MINIMUM PLANTING SPECIFICATIONS

All plants should conform to minimum standards number one or better, as set forth in Grades and Standards for Nursery Plants, State of Florida
Department of Agriculture.

ADDENDUM E: MARINA DECLARATION

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



Document Prepared By/Return To:
Charles W. Edgar III, Esquire
Cherry, Edgar & Smith, P.A.
8409 North Military Trail, Suite 123
Palm Beach Gardens, FL 33410

2148928
THIS DOCUMENT HAS BEEN RECORDED IN THE
PUBLIC RECORDS OF INDIAN RIVER COUNTY FL
BK: 2508 PG:1750, Page1 of 100
06/29/2011 at 03:38 PM,

JEFFREY K BARTON, CLERK OF COURT

**DECLARATION
OF
MARSH ISLAND YACHT CLUB, A CONDOMINIUM**

MARSH ISLAND DEVELOPMENT COMPANY, L.L.C., a Florida limited liability company ("Developer"), hereby declares:

1. **Introduction and Submission.**
 - 1.1 **The Land.** Developer owns the fee title to certain land and air rights located in the Indian River County, Florida, as more particularly described in Exhibit "A" annexed hereto (the "Land").
 - 1.2 **Submission Statement.** Developer hereby submits the Land and all improvements existing thereon and all other property, real, personal or mixed and all access easement rights and benefits, now or hereafter situated on or within, or benefiting, the Land - but excluding all public or private (e.g. cable television) utility installations therein or thereon - to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association or the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto.
 - 1.3 **Name.** The name by which this condominium is to be identified is **MARSH ISLAND YACHT CLUB, A CONDOMINIUM** (hereinafter called the "Condominium").
2. **Definitions.** The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
 - 2.1 "Act" means the Condominium Act (Chapter 718 of the Florida Statutes) as it exists on the date hereof and as may be hereafter renumbered.

- 2.2 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time.
- 2.3 "Assessment" means a share of the funds required for the payment of Common Expenses, which from time to time is assessed against the Unit Owner.
- 2.4 "Association" or "Condominium Association" means **MARSH ISLAND CONDOMINIUM ASSOCIATION, INC.**, a Florida corporation not for profit, the sole entity responsible for the operation of the Condominium.
- 2.5 "Association Property" means any property, real or personal, in which title or ownership is vested in the Association for the use and benefit of its members.
- 2.6 "Board of Directors" or "Board" means the Board of Directors of the Association, referred to in the Act as the "board of administration".
- 2.7 "By-Laws" means the By-Laws of the Association, as amended from time to time. The rules and regulations annexed to the By-Laws as Schedule "A" thereto, as amended from time to time, are referred to herein as the "Rules and Regulations".
- 2.8 "Charge" or "Charges" means an amount(s) payable to the Association per Section 11 hereof which is unique as to certain Units or as to their method of being calculated and, therefore, is not an Assessment.
- 2.9 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within the Units.
 - (b) These easements, rights and installations described as part of the Common Elements in the Act. .
 - (c) Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.10 "Common Expenses" mean all expenses incurred by the Association for the Condominium. For all purposes of this Declaration, "Common Expense" shall also include all reserves required by the Act (unless waived) or otherwise established by the Association, regardless of when reserve funds are expended, but shall not include any separate obligations of individual Unit

Owners. Common Expenses shall also include expenses paid by the Association pursuant to, or in connection with, the Easement Agreement (as defined below).

- 2.11 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.12 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements which is appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.13 "Condominium Property" means the land, improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.14 "County" means the County of Indian River, State of Florida.
- 2.15 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time.
- 2.16 "Developer" means the party originally executing this Declaration and any assignee of the rights of same party, to the extent of the assignment; provided that such assignment shall be in a written instrument recorded in the Public Records of the County.
- 2.17 "Easement Agreement" means that certain Easement and Cost Sharing Agreement by and between the Association and Marsh Island Homeowners' Association, Inc., a Florida corporation not for profit, recorded in or to be recorded in the Public Records of Indian River County, Florida, pursuant to which, among other things, Owners hereunder and various related parties have access over and to certain specified common areas owned and administered by said Homeowners' Association and by virtue of which the Association contributes Charges collected hereunder to be applied to various costs association with those common areas.
- 2.18 "Improvements" mean all structures and artificial changes to the natural environment located on the Condominium Property, including, but not limited to, docks, piers, pilings and the like.
- 2.19 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, or any other lender generally

recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

- 2.20 "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.21 "Phase" shall mean one or both of the areas eligible to be added to the Condominium Property, or new Units created by the subdivision of one or more existing Units, as provided in Section 23 hereof.
- 2.22 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.23 "Structure" means a structure(s) located on the Condominium Property, regardless of the nature or number of such structures.
- 2.24 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.
- 2.25 "Unit Owner" or "Owner of a Unit" or "Owner" means the Owner of a Condominium Parcel according to the Public Records of the County.
- 2.26 "Vessel" shall mean any boat or other watercraft kept or used in or about the Condominium Property or any Limited Common Element slip.

3. Description of Condominium.

- 3.1 Identification of Units. The Land presently contains thirty two (32) Units. Each such Unit is identified by a separate numerical designation as set forth on Exhibit "B" attached hereto. Exhibit "B" consists of a survey of the Land; a graphic description of the Improvements located thereon and a plot plan thereof. Said Exhibit "B", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions.

There shall pass with a Unit as an appurtenance thereto (a) an undivided share in the Common Elements and Common Surplus; (b) the right to use the Common Elements for their intended purposes, subject to this Declaration and the Rules and Regulations, and the exclusive right to use such portions of the Common Elements (i.e., Limited Common Elements) as may be provided in this Declaration; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration or the Act.

3.2 Unit Boundaries. Each Unit shall include that part of the Condominium Property that lies within the following boundaries:

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the parametrical boundaries:

(i) Upper Boundaries. There shall be no upper boundary of a Unit.

(ii) Lower Boundaries. The top surface of the unimproved Land.

(b) Parametrical Boundaries. The parametrical boundaries of the Unit shall be the boundaries shown on Exhibit "B".

3.3 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:

(a) Docks and Pilings. Any dock or piling which is used exclusively by or for one (1) or more Units shall be a Limited Common Element of such Unit(s).

(b) Conveyance of a Unit. A conveyance of a Unit shall automatically include the exclusive right to use all Limited Common Elements appurtenant to that Unit.

3.4 Easements. The following easements are hereby created (in addition to any easements created under the Act or the Reciprocal Easement Agreement):

- (a) Support. To the extent applicable, each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units and the Common Elements.
- (b) Utility and Other Services; Drainage. Easements are reserved under, through and over the Condominium Property (including Units) as may be required from time to time for utility, cable television, communications and security systems, and other services and drainage in order to serve the Condominium. The Association shall have a right of access to each Unit during reasonable hours when necessary for maintenance, repair or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit or units.
- (c) Encroachments. If (a) any portion of the Common Elements encroaches upon any Unit; (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements or Association Property; or (c) any encroachment shall hereafter occur as a result of (i) construction of the Improvements; (ii) settling or shifting of the Improvements; (iii) any alteration or repair to the Common Elements or Association Property made by or with the consent of the Association or Developer, as appropriate, or (iv) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements or Association Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and their guests and invitees, shall exist for pedestrian traffic over, through and across the Common Elements and over the Units as may be intended and designated for such purpose and use. None of the easements specified in this subparagraph (d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

- (e) Construction; Maintenance. The Developer (including its designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of repair, replacement and maintenance purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so, but in no event shall the Developer be deemed obligated to do so by virtue of this provision.
- (f) Easement Agreement. The Association is a party to the Easement Agreement which, among other things, affords access to and from the Condominium Property and the nearest public road as well as certain parking rights and the use of other property, including selected areas of the club house, described in the Easement Agreement. The rights set forth in the Easement Agreement, subject to the terms and provisions thereof, this Declaration and the Rules and Regulations shall be deemed appurtenant to the Units.
- (g) Phases. Developer hereby grants and declares an easement for marine navigation over each Phase in favor of each permitted user of a Unit for as long as the Phase is not part of the Condominium Property. Upon the addition of a Phase to the Condominium Property, such easement shall be deemed extinguished by merger and the provisions hereof creating and governing use rights in the Common Elements shall instead control.
- (h) Additional Easements. The Association, by and through the Board of Directors on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, telecommunications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or relocate any such existing easements or drainage facilities, in any portion of the Condominium Property or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium Property or Association Property, as the Association shall deem necessary or desirable, provided that the tentative such easements or the relocation of existing easements will not (i) be effective without the consent of the beneficiaries thereof are (ii) will not prevent or unreasonably interfere with the reasonable, lawful use of the Units

(i) Dredging and Other Activity. The Association shall have an easement over and within all Units for purposes of dredging, maintenance of the Condominium Property and the conduct of all other activities for which entry into Units by the Association is permitted by the Act. Any such entry into the Unit, except in the event of an emergency, shall be upon at least forty eight (48) hours prior written notice to the party making use of the Unit at the applicable time and, if it is necessary that the vessel(s) being kept therein be removed, then such notice shall at least seventy two (72) hours in advance and the Association shall make provision for such Vessel to be moored in an alternate location within or outside of the Condominium Property, at the expense of the Association if necessary.

4. Restraint upon Separation and Partition of Common Elements.

4.1 The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall be brought, except as provided herein with respect to termination of the Condominium.

5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights.

5.1 Shares. Each Unit shall own, as an appurtenance thereto, a share of the Common Elements and Common Surplus equal to its pro rata share based on the number of Units now or hereafter created (i.e., one (1) divided by the total number of Units in the Condominium) and shall be responsible for the same share of Common Expenses.

5.2 Voting. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.

6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:
- 6.1 By the Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors of the Association or by five (5) members of the Association. Except as elsewhere provided, approvals of proposed amendments must be by affirmative vote of Unit Owners owning in excess of eighty five percent (85 %).
- 6.2 Execution and Recording. An amendment, pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. Amendments by the Developer must be evidenced by a similar certificate executed by the Developer alone. An amendment of the Declaration is effective when the amendment and the certificate of amendment are properly recorded in the public records of the County.
- 6.2 Provisos. No amendment to this Declaration shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the proportion by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus, unless the record Owner(s) thereof, all record owners of mortgages or other liens thereon and the Owners of enough other Units necessary to constitute a majority of the voting interests in the Association when added to the votes of the Owners of the affected Units, shall approve the amendment. Any amendment restricting Unit Owners' rights relating to the rental of Units applies only to Unit Owners who consent to the amendment and to Unit Owners who purchase their Units after the effective date of that amendment. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer or mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment, such joinder not to be unreasonably withheld. The provisions of this Section 6.2 may not be amended in any manner.

No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of Declaration. See provision . . . for present text." Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated amendment.

7. Maintenance and Repairs.

7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural (except as provided below), ordinary or extraordinary, shall be performed by the Association, except as otherwise expressly provided to the contrary herein and except as to any dock boxes located on a Limited Common Element, which shall be maintained by the Owner. Vessels shall be the sole maintenance and repair responsibility of the applicable owners thereof.

7.2 Common Elements or Association Property. Except to the extent expressly provided to the contrary herein all maintenance, repairs and replacements in or to the Common Elements or Association Property (other than Limited Common Elements as provided above) shall be performed by the Association and the cost and expense thereof shall be assessed to all Unit Owners as a Common Expense. However, where the need for such maintenance, repair or replacement arises from or is necessitated by the negligence, misuse or neglect of specific Unit Owner(s), such cost and expense shall be recovered entirely from such Unit Owner(s).

8. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, or any part thereof, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) costing in excess of \$100,000.00 in the aggregate in any calendar year, the Association may proceed with such additions, alterations or improvements only if the making of such additions, alterations or improvements shall have been approved by a majority of the Units represented at a meeting at which a quorum is

attained. Any such additions, alterations or improvements to such Common Elements, or any part thereof, costing in the aggregate \$100,000.00 or less in a calendar year may be made by the Association without approval of the Unit Owners. The foregoing approval requirements are in lieu of those provided in Section 718.113(2) of the Act.

The cost and expense of any such additions, alterations or improvements to such Common Elements shall constitute a part of the Common Expenses and shall be assessed to the Unit Owners as Common Expenses. For purposes of this section, "aggregate in any calendar year" shall include the total debt incurred in that year, if such debt is incurred to perform the above-stated purposes, regardless of whether the repayment of any part of that debt is made beyond that year.

9. Additions, Alterations or Improvements by Unit Owner.

9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, his Unit or any Limited Common Element without the prior written consent of the Board of Directors, except that Unit Owners shall be allowed to subdivide their Units ("a Subdivision") so long as the newly created Units are at least 25' and the creation of new units is approved by all governmental authorities having jurisdiction thereof. The Board shall have the obligation to answer any written request by a Unit Owner for approval of such an addition, alteration or improvement (other than a Subdivision, which does not require such approval) in such Unit Owner's Unit or Limited Common Elements within forty-five (45) days after such request and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent. The proposed additions, alterations and improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction (although the Association shall in no manner be required to enforce same) and with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, construction details, lien protection or otherwise. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association and its Board of Directors and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association.

9.2 Additions, Alterations or Improvements by Developer. —The Developer shall have the additional right, without the consent or approval of the Board of Directors or other Unit Owners, to make alterations, additions or improvements, structural and non-structural ordinary and extraordinary, in, to and upon any Unit owned by it or by another Unit Owner consenting to the applicable change(s), to Limited Common Elements appurtenant thereto and immediately adjacent Common Elements (including, without limitation, the removal or addition of structural portions of the Improvements. These alteration rights shall include, without limitation, installing and relocating finger piers, pilings and other items. No such change may result in diminishing the size of any other Unit unless the owner thereof consents.

10. Operation of the Condominium by the Association;
Powers and Duties.

10.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium and the Association Property. The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association (respectively, Exhibits "C" and "D" annexed hereto), as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:

- (a) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein or elsewhere, or at any time and by force, if necessary, for making emergency repairs therein necessary to prevent damage to the Common Elements or Association Property or to any other Unit or Units.
- (b) The power to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements.
- (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior request.
- (d) The power to contract for the management and maintenance of the Condominium Property or any Association Property and the Association and to authorize a duly licensed management agent to assist the Association in carrying out its powers and

duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of Common Elements and any Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

- (e) The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefore mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of Directors and of the Units represented at a meeting at which a quorum has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws with respect to certain borrowing, provided further that no such action shall be permitted while the Developer owns any Unit without the prior written consent of the Developer.
- (f) The power to charge a fee for the exclusive use of any Common Elements or Association Property by an Owner having a right to such use.
- (g) The power to adopt and amend rules and regulations concerning the details of the operation and use of the Condominium Property and any Association Property.
- (h) The power and duty to cause all obligations and duties of the Association under the Easement Agreement to be performed and to cause all Unit Owners and others exercising the privileges granted thereunder to comply therewith. These obligations shall include without limitation, all environmental conditions, and the payment of rent and any and all monitoring and reporting requirements.
- (i) All of the powers which a corporation not for profit in the State of Florida may exercise.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration or the exhibits attached hereto, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles

of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations, all as amended from time to time. Notwithstanding anything in this Declaration or its exhibits to the contrary, the Association shall at all times be the entity having ultimate authority over the Condominium, consistent with the Act.

- 10.2 Limitation upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements done by or on behalf of any Unit Owners regardless if whether or not same shall have been approved by the Association pursuant to Section 9.1 hereof.
- 10.3 Restraint upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.
- 10.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration or by law.
- 10.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations or applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal.

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

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

(b) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, THE STATE OF FLORIDA, THE COUNTY, AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTIOUS ACTIVITIES; AND

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

EACH UNIT OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO HIS UNIT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF, ANY PORTION OF THE CONDOMINIUM 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.

AS USED IN THIS ARTICLE, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, MANAGERS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS AND SHALL ALSO INCLUDE THE DEVELOPER, WHICH SHALL BE FULLY PROTECTED HEREBY.

11. Determination of Common Expenses and Fixing of Assessments Therefor; Charges. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the Assessments payable by each of them as determined by the Board of Directors as aforesaid and shall furnish copies of each budget, on which such Assessments are based, to all Unit Owners and (if requested in writing) to their respective mortgagees. The Common Expenses shall include the expenses of and reserves for (if required by law and not lawfully waived) the operation, maintenance, repair and replacement of the Common Elements, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change to cover actual expenses at any time. Any such change shall be adopted in a manner consistent with the provisions of the By-Laws.

All sums payable under the Easement Agreement described herein, and all costs of complying with the requirements thereof, shall be Common Expenses hereunder.

In addition to collecting Assessments for the payment of Common Expenses, the Association shall collect and remit, and each applicable Unit Owner shall pay, a charge as specified below (each, as "Charge" and together, "Charges"). Because Charges are not allocated per Section 5 of this Declaration, they shall not be considered Assessments. Accordingly, among other things, the lien provided for in Section 13 hereof shall not secure the payment of Charges (i.e., may not be used to collect same). However, all obligations of Unit Owners to pay Assessments, and all rights of the Association to enforce such payment (including, without limitation, as to the personal obligation of a Unit Owner and the Unit Owner's successors

in title, interest for late payment and attorney's fees and other costs of collection) shall apply to the obligation to pay Charges as fully as if said obligations and rights were restated here.

The following Charges shall be payable as to the Units described herein:

- (a) Units Used by Non-Residents. The Owner of any Unit which is used by a person or entity, whether Owner, lessee or otherwise, who/which is not an owner of a lot in the Marsh Island residential development (i.e., a member of Marsh Island Homeowners' Association, Inc., the "Grantor" under the Easement Agreement) shall pay a Charge equal to the total amount payable to said Grantor by the Association pursuant to the Easement Agreement divided by the number of Units so used plus thirty two (32). This Charge shall apply regardless of whether the Owner of the Unit is such a resident as long as the Unit is leased to or otherwise regularly used for a Vessel owned (or leased) by a non-resident.
- (b) Utilities. Any utility services for which the Association pays but which are sub-metered to individual Units shall be paid for by the Owners of such Units based upon the Association's periodic reading of, and billing for, such meter/service.

12. Collection of Assessments.

12.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including a purchaser at a judicial sale, shall be liable for all Assessments coming due while he is the Unit Owner. In the case of any such conveyance, but subject to Section 13.5, below, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor for his share of the Common Expenses up to the time of the conveyance, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

12.2 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum from the date due until paid. The Association has a lien on each Condominium Parcel for any unpaid Assessments on such Parcel, with interest and for reasonable attorney's fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien. The lien is effective as of the date of the recording of this Declaration and shall be evidenced by the recording of a claim of

lien in the Public Records of the County, stating the description of the Condominium Parcel, the name of the record Owner, the amount due and the due dates. The claim of lien shall not be released until all sums secured by it (or such other amount as to which the Association shall agree by way of settlement) have been fully paid or until it is barred by law. The claim of lien shall secure (whether or not stated therein) all unpaid assessments, interest thereon, and costs and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a final judgment of foreclosure thereof. A claim of lien shall be signed and acknowledged by an officer or agent of the Association. Upon payment, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association shall have all other collection and enforcement rights afforded by the Act from time to time, including the right to receive rent from tenants of Units as provided by the Act.

As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid and after thirty (30) days' prior written notice to the applicable Unit Owner, the Association may declare the Assessment installments for the remainder of the year to be accelerated and shall be due and payable upon the recording of the claim of lien for same. In the event that the amount of such installments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect.

- 12.3 Notice of Lien and of Intention to Foreclose Lien. No lien shall be recorded until at least thirty (30) days after the Association gives written notice of its intent to do so to the Unit Owners as required by the Act. No foreclosure judgment may be entered until at least thirty (30) days after the Association gives written notice to the Unit Owner of its intention to foreclose its lien to collect the unpaid Assessments. If this notice is not given at least thirty (30) days before the foreclosure action is filed, and if the unpaid Assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the Association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the Unit Owner or by certified or registered mail, return receipt requested, addressed to the Unit Owner at the 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 Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the Unit Owner records a Notice of Contest of Lien as provided in the Act.

- 12.4 Appointment of Receiver to Collect Rental. If the Unit is occupied, the court in its discretion may require the Unit Owner to pay a reasonable rental for the Unit and the Association is entitled to the appointment of a receiver to collect the rent.
- 12.5 First Mortgagee. In the event a first mortgagee or other purchaser shall obtain title to a Unit as a result of foreclosure of a mortgage thereon, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such first mortgagee shall be liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Condominium Parcel or chargeable to the former Unit Owner of such Condominium Parcel which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed in lieu of foreclosure or in satisfaction of debt. However, the first mortgagee's liability as aforesaid shall be limited to assessments coming due during the period ending with the acquisition of title as aforesaid. Further, if the first mortgagee properly joined the Association in its foreclosure action, such liability shall not exceed (i) assessments for a period of more than six (6) months prior to acquisition of title or (ii) one percent (1%) of the original mortgage debt, whichever is less.

Any assessments which cannot be collected by virtue of the foregoing paragraph shall be deemed a Common Expense payable by all of the Unit Owners.

- 12.6 Certificate of Unpaid Assessments and Charges. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating all Assessments, charges and other monies owed to the Association by the Unit Owner with respect to his Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby.
- 12.7 Installments. Regular Assessments and Charges shall be collected monthly or quarterly (as determined by the Board of Directors), in advance.

13. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

13.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies described herein covering portions of the Condominium Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees shall be deemed additional insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee (if appointed). All original policies and endorsements thereto shall be retained by the Association and full and complete copies thereof shall be deposited with the Insurance Trustee (if appointed).
- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

13.2 Coverage. The Association shall maintain insurance covering the following:

- (a) Casualty. In light of the history of the Condominium Property having survived hurricanes and other maladies without significant damage, the inordinately high cost of casualty insurance, and in keeping with marina industry practices, the Board of Directors of the Association shall not be required to obtain flood, windstorm or other casualty insurance for the Improvements within the Condominium Property; provided, however, that this provision shall not prohibit it from doing so. Accordingly, all Unit Owners, but virtue of accepting title to their Units, and all other users of the Condominium Property, by virtue of making such use, hereby waive any claim that the Board of Directors or the Association is under a duty to obtain such insurance.
- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 per occurrence and \$2,000,000.00 aggregate with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa, if reasonably available.
- (c) Worker's Compensation and other mandatory insurance, when applicable.
- (d) Fidelity Insurance covering all persons who control or disburse Association funds, such insurance to be in an amount which is the greater of that required by the Act or determined by the Board.
- (e) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.
- (f) Such Other Insurance as the Easement Agreement shall require and as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and

against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, a committee of the Board of Directors or members of any such committee, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

- 13.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.
- 13.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed in such manner as the Board of Directors deems appropriate.
- 13.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida or one or more of the Directors of the Association. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees

in the following shares, but shares need not be set forth on the records of the Insurance Trustee.

- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.
- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
- (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

13.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

- (a) Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefore.
- (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.

- (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
- (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.

- 13.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 13.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his Unit, nor casualty or theft loss to the contents of an Owner's Unit. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.
- 13.9 Benefit of Mortgagees. Certain provisions in this Section 14 entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 13.10 Board Acting as Insurance Trustee. The Board of Directors of the Association shall have the option, in its discretion, of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 13.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

13.12 Unit Owner's Insurance. Each Owner shall maintain liability insurance of at least \$1,000,000 per occurrence within the Owner's Unit or Limited Common Elements and any Vessel kept in or about the Condominium Property.

14. Reconstruction or Repair after Fire or Other Casualty.

14.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraph and to Section 15.4, in the event of damage to or destruction of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Insurance Trustee (if appointed) shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If seventy-five percent (75%) or more, measured in terms of replacement cost, of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners, if the Insured Property is or includes the portion of the Condominium Property in which same are located) owning eighty percent (80%) of the applicable interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired, with the Condominium to then be terminated and the (former) Condominium Property to be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all

mortgages and liens on his Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Insurance Trustee (if appointed) notifies the Board of Directors and the Unit Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

14.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the applicable interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.

14.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

- (a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:
- (i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$100,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.
 - (ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$100,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph (i) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.
 - (iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect

the repairs. Any balance remaining after such repairs have been effected shall be Common Surplus.

- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee (if appointed) shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee (if appointed) may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

14.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements.

14.5 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

15. Condemnation.

- 15.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee (if appointed). Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 15.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after casualty. For this purpose, the taking by eminent domain also shall be deemed to be a casualty.
- 15.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and special Assessments will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by the taking will be made usable in the manner provided below. The proceeds of the awards and special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.
- 15.4 Unit Reduced but Useable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made useable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
- (a) Restoration of Unit. The Unit shall be made useable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be payable by the Owner of the Unit.

- (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
- (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced.

15.5 Unit Made Unusable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made useable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so useable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefore shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units), each Unit to receive a fractional interest equal to one (1) over the remaining number of Units.

- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to the applicable percentage shares of those Owners after all adjustments to such shares effected pursuant hereto by reason of the taking.
- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that the arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination upon an average of their appraisals of the Unit. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with the Florida Arbitration Code. The cost of arbitration proceedings shall be assessed against all Units Owners, including Owners who will not continue after the taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking.

15.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners in the shares in which they own the Common Elements after adjustments to these shares effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

15.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the ownership of the Common Elements and share in the Common Expenses and Common Surplus that are effected by the taking shall be evidenced by an

amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

16. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium Property and for the protection of the values of the Units, the use of the Condominium Property and Limited Common Element Boat slips shall be restricted to and shall be in accordance with the following provisions:

16.1 Lawful Use. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. Without limiting the generality of the foregoing, the terms, conditions and requirements of all permits issued by the St. Johns River Water Management District, U.S. Army Corps of Engineers, Florida Department of Environmental Protection, the County and all other governmental authorities shall be complied with at all times.

16.2 Rules and Regulations. The Rules and Regulations may be amended from time to time by the Board of Directors. Copies of the Rules and Regulations and amendments shall be made available by the Association to all slip Owners. No new or amended regulation may be enforced prior to distribution to the slip Owners. Changes in the Rules and Regulations shall not be required to be recorded in the Public Records of the County.

16.3 Easement Agreement. All person making use of any property outside the Condominium Property pursuant to the Easement Agreement shall do so only in compliance with the terms, conditions, restrictions and requirements set forth therein, all of which the Association shall have the right to enforce through all means provided by this Declaration and the Act.

16.4 Use and Occupancy of the Slips. Except as may be provided elsewhere in this Declaration, each slip shall be used only for the mooring of a Vessel(s) in seaworthy condition and under its own power. Use of a slip by more than one Vessel shall be governed by the Rules and Regulations promulgated by the Association from time to time. Whenever any Unit is owned by a non-natural person such as, but not limited to, a corporation, partnership, limited liability company or other entity (other than the Developer), the agent of such entity shall designate, at the time of the closing of the purchase of the slip, a particular family or individual who shall be entitled to occupy the slip. The adult members of the family designated by the non-natural entity to occupy the slip shall, by virtue of such occupancy, be deemed to have entered into a covenant in favor of the Association

agreeing to comply with the terms and provisions of this Declaration, the Articles of Incorporation, By-Laws and the Rules and Regulations. No persons, other than the Unit Owner (or the designated family or individual of an entity Owner), or their authorized lessee, shall be entitled to occupy a slip.

- 16.5 Commercial Activities. Except as otherwise provided below, no drilling, mining, manufacturing, trade, business, commerce, industry, profession or other occupation whatsoever shall be conducted or carried on upon any slip or any part thereof, other than the leasing of slips in accordance with the terms hereof. The foregoing shall not apply to any lawful dredging operation. Notwithstanding the foregoing, to the extent lawful a slip Owner may use his slip for the purpose of a sale of a Vessel approved by the Board to be moored in the slip in the same manner as all other Vessels, provided that no Vessel sales office shall be permitted on or within a slip.
- 16.6 Pets. No pets or other animals shall be permitted in or about the Property except for the purpose of embarking and disembarking from Vessels. All pets brought into the Property shall be leashed (when not on a Vessel) or carried and attended at all times. Pet owners are responsible for cleaning up after their pets. The Board of Directors shall have the right to order the removal of any pet which is considered a nuisance, in the Board's sole and absolute discretion. In such event, the Board of Directors shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property.
- 16.7 Mooring. Each Owner is solely responsible for the proper mooring of his Vessel(s) and is required to maintain mooring lines in good condition and sufficiently strong to secure the Vessel(s) at all times. Any special mooring rules or procedures issued by the Association shall be complied with at all times. The size and dimensions of a slip do not represent that a Vessel of that size can be moored in the slip due to the presence of Common Elements, depth requirements and projections (including all bowsprits, booms, pulpits, dive platforms, and other projections and overhangs). The Vessel(s) (including all bowsprits, booms, pulpits, and other projections and overhangs) must be moored close to the main dock, consistent with good boating practice. The Vessel(s) (including all protrusions) may not extend beyond the boundaries of the slip into the waters of the Common Elements unless approved by the Board of Directors. .

- 16.8 Hurricane and High Wind Threat. During hurricane and other high velocity wind threats, each Owner shall be responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency. If a Owner's Vessel sinks as a result of a storm, or for any other reason, the Owner must remove the sunken Vessel from the Property as soon as practical after the occurrence of such event and, if not so removed after the sinking, the Association may (but shall not be obligated to) remove the sunken Vessel and impose a Special Assessment against the Owner for the cost of such removal. Each Owner agrees to indemnify, defend and save the Association, its agents, employees and designees for and from any and all loss or damage incurred in connection with the exercise or non-exercise of the Association's rights hereunder. If a Owner plans to be absent during the hurricane season, such Owner must prepare his slip and secure or remove, as appropriate, his Vessel prior to his departure in accordance with the standards established by the Board of Directors (or in the absence thereof, with all due care), designate a responsible firm or individual to care for his slip and Vessel should there be a hurricane or other storm, and furnish the Association with the name, address and telephone number of such firm or individual. Such firm or individual shall be subject to the approval of the Association. The Owner shall be liable for all damages caused to the Property and to the slips, Vessels or other property of other Owners for such Owner's improper preparation or failure to remove, as the case may be, of his slip and Vessel for hurricanes and other storms. Notwithstanding anything contained herein to the contrary, the Association may also levy fines in accordance with the Rules and Regulations if the Owner fails to abide by the provisions of this section. Notwithstanding the right of the Association to enforce the foregoing requirements, the Association shall not be liable to any Owner or other person or entity for any damage to persons or property caused by a Owner's failure to comply with such requirements.
- 16.9 Open Fires. No open fires shall be permitted on any Vessel, slip or the Property, except as, where and when permitted by the Board.
- 16.10 Cleaning of Fish. No fish or other marine life of any kind shall be cleaned, prepared or processed in any manner on the Property, including any Vessel traversing or mooring within the Property, except as, where and when permitted by the Board, if at all.

- 16.11 Public Authorities. Notwithstanding anything contained herein to the contrary, the Association may permit police, U.S. Coast Guard, the County, the Florida Marine Patrol and similar watercraft of public authorities to tie up to and be kept on any portion of the Property.
- 16.12 Installations on Units; Common Elements. No person shall install any dock box, lift, ladder or other equipment on the Common Elements (including Limited Common Elements), without first obtaining the written approval of the Board of Directors of the Association as to the location, characteristics and method of installation of such equipment. The Board of Directors may include in the Rules and Regulations procedures for requesting and obtaining such approval, restrictions on certain installations which are not to be permitted, standards for the appearance and method of installation of equipment and other relevant provisions; provided, however, that the Board of Directors may also include various conditions in specific approvals without the need for adopting such Rules and Regulations. Further, no such approval by the Board of Directors shall ensure the safety, soundness, workmanship quality, legal compliance or performance of any such equipment or installation, same being the sole responsibility of the Unit Owner, which responsibility shall extend to any damage to the Common Elements or other portions of the Condominium Property, or any Vessels kept therein, resulting from the aforesaid activities by or under the authority of the Unit Owner.
- 16.13 Signs. Except in connection with development, sales, leasing or resale of slips by Developer, no signs, advertisements or notices of any kind, shall be displayed to the public view on any slip, any Vessel or on the Property, without the prior written approval of the Board; provided that the Board shall approve signs offering Vessels for sale if same do not exceed twelve inches (12") by eighteen inches (18") in size. The foregoing shall not apply to Slips (or Vessels moored in Slips) owned by the Developer or used by a designee of Developer and shall not prohibit lettering, registration numbers, flags and other displays customarily found on recreational watercraft.
- 16.14 Disturbance of Neighboring Properties. No activities conducted upon Vessels or otherwise within the Condominium Property shall generate sound or light which becomes a disturbance to occupants of other Units or of residential property adjacent to or nearby the Condominium Property. Such prohibited activities shall include overly loud parties or other gatherings and noise-generating maintenance/repair activities on/to Vessels. Without limiting the generality of the rulemaking authority of the Board of

Directors, such types of activities may be restricted altogether to specified hours, regardless of the level of sound or light generated thereby.

16.15 Nuisances Prohibited. No person shall engage in any practice, exhibit any behavior, nor permit any condition to exist that constitutes a nuisance or will become an unreasonable source of annoyance or disturbance to any occupant of the Condominium.

16.16 Marina Appearance.

(a) The Board of Directors shall have the right to approve (or deny or condition approval of) all Vessels which are moored within the Condominium Property. The minimum standards for such approval shall be the compliance of the Vessel with the requirements of this Declaration and with those adopted by the Board. The granting of approval for a Vessel shall not, however, be deemed to create any liability of Developer, the Board or the Association or of their officers, directors or members as to: (i) the unsafe or unseaworthy condition of any Vessel or any damage to persons or property arising therefrom; or (ii) permission for the Vessel to extend beyond the boundary of the slip. The Board's approval may be given through its designated agent, such as the dock master. The Board of Directors shall also have the right to approve (or deny or condition approval of) the installations described in Section 17.11, above.

(b) Neither Developer, the directors or officers of the Association, the members of the Board, nor any person acting on behalf any of them, shall be liable for any costs or damages incurred by any slip Owner or any other party due to any mistakes in judgment, negligence or any action of the Board in connection with approval or disapproval of any proposed Improvements or any Vessel. Each slip Owner and occupant of the slip, by acquiring title or an interest therein, or by assuming possession thereof, agrees that he shall not bring any action or suit against Developer, the directors or officers of the Association, the members of the Board or their respective agents, in order to recover any damages caused by the actions of the Board. The Association shall indemnify, defend and hold harmless the Board and each of its members from all costs, expenses and liabilities, including attorney's fees, of all nature resulting by virtue of the acts of the Board or its members while acting as Board members except where the Board or its members are guilty of gross negligence or willful misconduct.

- 16.17 Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be deposited except in trash receptacles as permitted by the Association. The requirements from time to time of the County or other applicable jurisdiction for disposal or collection of solid waste shall be followed. The equipment, trash bins or trash cans for the storage or disposal of such material shall be provided by the Association at various locations in the Condominium Property. The Association shall be responsible for keeping the equipment in a clean and sanitary condition and for disposing of all garbage, refuse, trash or rubbish in compliance with all applicable requirements.
- 16.18 Sanitary Equipment. Each Vessel must have such sanitary equipment on board as is required by all applicable federal, state and local authorities, to the extent applicable. No Vessel shall be deemed to be in compliance with this paragraph if such equipment is not fully operational or if such equipment such as a holding tank or approved marine sanitary system is bypassed or altered contrary to such requirements. The Association shall have the right to board all Vessels upon reasonable notice to inspect same for compliance with this requirement. In no event whatsoever shall an Owner discharge sewage or any other substance (other than bilge water) into the waters of or near the Condominium Property.
- 16.19 Laundry. No portion of the Condominium Property, and no Vessel, shall be used for the displaying or hanging of laundry.
- 16.20 Swimming. No recreational swimming shall be permitted within the waters of the marina. Diving shall be permitted for the purpose of maintenance and repair of Vessels or of the Condominium Property.
- 16.21 Personal Water Craft. Subject to the Rules and Regulations promulgated by the Association from time to time otherwise allowing same, no tenders, jet skis, wet bikes or wave-runners may be kept and operated within the marina.
- 16.22 Vessel Requirements. All Vessels must: (i) be fully equipped and operable for operation on the sea in accordance with the standards imposed by the U.S. Coast Guard (except during a period of temporary repairs); and (ii) comply with all licensing and registration requirements. Each Vessel (including tenders, dinghies and personal watercraft) shall be registered with the Association on a fully completed form provided by the Association.

- 16.23 Temporary Removal of Vessels. From time to time, the Association may require that all Vessels and Improvements to the Marina Property be removed for the maintenance, repair on and dredging of the Property at which time the Marina slips may be entered for such period as may be necessary. To the extent that submerged land may be removed from the slip, it will be treated as the property of the Association, and need not be replaced.
- 16.24 Hazardous or Toxic Waste. The handling, storage, transportation and disposal of hazardous or toxic materials shall be prohibited within the Marina; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum products used by an Owner in connection with the operation of his Vessel. The Association shall have the right to immediately remove, or cause the removal of, any hazardous or toxic material within the Marina. Each Owner shall ensure that any bilge water pumped into the waters of the marina does not contain any petroleum or other hazardous or toxic materials. For purposes of this paragraph, hazardous or toxic materials shall be as defined by Federal, Florida and common law. Each Owner shall indemnify, defend and save the Association and any management agent harmless from and against any damages, claims and liability resulting from or arising out of the violation of any of the requirements of this paragraph by such Owner. All expenses incurred by or the Association in connection with compliance with all environmental and related laws shall be a Common Expense, subject to the foregoing indemnification.
- 16.25 Crew Restrictions. Each Owner shall file with the Association information, as deemed necessary by the Board of Directors, on crew members attending to the Vessels. An Owner is responsible and liable for acts and omissions of crew members and shall cause crew members violating this Declaration or the Rules and Regulations of the Association to be removed from and prohibited from returning to the Marina.
17. Selling, Leasing and Mortgaging of Units. Units may be made *bona fide* subject to mortgages without restrictions, but sales and leases thereof shall be subject to the provisions of this Section 17.
- 17.1 Sales. Any Owner may sell Owner's Unit to any bonafide purchaser, provided, however, that the conveyance of such Unit shall not be effective unless the deed or other instrument of conveyances accompanied by a certificate of the Association showing that all assessments due the Association have been paid in full and no violations of the restrictions set forth in this Declaration or the Rules and Regulations of the Association exist

as of the date of the Certificate. In the event of a sale of a Unit by an Owner who is a member of Marsh Island Yacht Club, such sale shall be deemed to have automatically conveyed the right to the refund of such Owner's initial deposit made to said Club to the purchaser of the Unit and the selling of Owner's surrender of such right, with the maximum period for the return of said initial deposit to be thirty (30) years from the date the acquiring Owner accepts title to the Unit.

- 17.2 Leases. No portion of a Unit (other than an entire Unit) may be rented.
- 17.3 Prohibition on Mortgages. No Unit shall be encumbered by a mortgage until the earliest of the date that (i) all Phases have been added to the Condominium, (ii) seven (7) years from the date of this Declaration or (iii) Developer records a notice in the Public Records of the County that it will not add any additional Phases to the Condominium. Developer may waive this prohibition by a written instrument recorded in the Public Records of the County if the proposed mortgagee of the applicable unit meets certain requirements of Developer as to the approval of changes in Phases not yet added to the Condominium.
- 17.4 No Severance of Ownership. No part of the Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements.
- 17.5 Gifts and Devises, etc. Any Unit Owner shall be free to convey or transfer his Unit by gift, to devise his Unit by will, or to have his Unit pass by intestacy, without restriction, provided, however, that each succeeding Unit Owner shall be bound by, and his Unit subject to, the provisions of this Section 18.
18. Compliance and Default. Each Unit owner and every occupant (including a lessee) of a Unit and the Association shall be governed by and shall comply with the terms of this Declaration of Condominium and all exhibits annexed hereto, and the rules and regulations adopted pursuant to those documents, as the same may be amended from time to time. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:
- 18.1 Negligence. A Unit Owner shall be liable for the expense of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his or their

guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association.

- 18.2 Compliance. In the event a Unit Owner or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property the Association shall have the right to proceed in a court of equity to require performance and/or compliance, to impose any applicable fines or to sue in a court of law for damages.
- 18.3 Costs and Attorneys' Fees. In any proceeding arising because of an alleged failure of a Unit Owner or the Association to comply with the requirements of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees).
- 18.4 No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the exhibits annexed hereto, or the rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.
19. Termination of Condominium. The Condominium shall continue until (i) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (ii) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least seventy five percent (75%) of the Units and by the Primary Institutional First Mortgagee. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such net proceeds all mortgages and liens on his Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the public records of the County.

This Section may not be amended without the consent of the Primary Institutional First Mortgagee, which consent shall not be unreasonably withheld.

20. Additional Rights of Mortgagees and Others.

20.1 Institutional First Mortgagees shall have the right, upon written request to the Association, to: (i) examine the Condominium documents and the Association's books and records, (ii) receive a copy of the Association's financial statement for the immediately preceding fiscal year, (iii) receive notices of and attend Association meetings, (iv) receive notice of an alleged default in any obligations hereunder by any Unit Owner, on whose Unit such Mortgagee holds a mortgage, which is not cured within thirty (30) days of notice of default to the Unit Owner, and (v) receive notice of any substantial damage or loss to any portion of the Condominium Property.

20.2 Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing, the right to timely written notice of (i) any condemnation or casualty loss affecting a material portion of the Condominium Property or the affected mortgaged Unit, (ii) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit, (iii) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, (iv) any proposed termination of the Condominium, and (v) any proposed action which requires the consent of a specified number of mortgage holders.

20.3 The approval of a majority of Institutional First Mortgagees shall be required to effect an amendment to the Declaration which materially alters, or adds, a provision relating to: (i) assessments and lien rights; (ii) insurance or fidelity bonds; (iii) maintenance responsibilities for the various portions of the Condominium Property; (iv) boundaries of any Unit; (v) convertibility of Units into Common Elements or Common Elements into Units; (vi) leasing of Units; and (vii) restrictions on Owners' rights to sell or lease Units. Such approval shall not be unreasonably withheld.

21. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association, shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the

Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration and such Articles, By-Laws and applicable rules and regulations as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

22. **Disclaimer of Warranties.** DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL UNIT OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

23. **Phasing Plan.** Developer hereby reserves the right to add Phases to the Condominium and hereby reserves the right to amend this Declaration to add Phase II, III, IV and V to the Condominium in accordance with this Section:
- 23.1 The legal descriptions of Phases II, III, IV and V are shown on Exhibit "A" to this Declaration, subject to non-material changes which may be made by the Developer.
- 23.2 Phases III, V and VI are intended to be created by the subdivision of already-existing Units (and, hence, are not technically within the traditional, statutory definition of a "phase") whereas Phases II and IV are intended to be additions to the Condominium property. Accordingly, references to "additions" or "the addition of" a Phase shall include either or both methodologies.
- 23.3 Any units added in Phase II, III, IV and V must have been approved by all governmental agencies having jurisdiction

thereof the Units therein, shall be not less than the size shown on Exhibit "B-1", and shall not extend into the marina a manner which interferes with the 55' "channel" as shown on Exhibit "B"

- 23.4 Notwithstanding the foregoing, the number of Units in a Phase and the size of such Units may vary within the range of ten percent (10%) fewer or smaller Units on the low side to ten percent (10%) more or larger Units on the high side. The foregoing shall not restrict, however, developer from greater variations if same are approved as provided in Section 718.403(2) of the Act by the requisite Unit Owners directly or through powers of attorney.
- 23.5 Upon the addition of a Phase, if at all, each Unit in the Condominium shall have a share of ownership of Common Elements and Common Surplus and a share of Common Expenses equal to a fraction in which the numerator is one (1) and the denominator is the total number of Units then existing in the Condominium (i.e., after the addition of the Phase).
- 23.6 There will be no recreational facilities or personal property provided with any Phase.
- 23.7 If no Phase is added to the Condominium, the voting rights and shares of Common Elements, Common Surplus and Common Expenses shall remain as stated in Exhibit "C-1" hereto.
- 23.8 Phases II, III, IV and V shall be added, if at all, no later than seven (7) years after the recording of this Declaration.
- 23.9 Developer does not anticipate any change or impact on the Unit Owners in the Condominium arising from the addition of any Phase other than as stated above and the dilution of voting strength of existing Owners.

24. Additional Provisions.

- 24.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium, or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners. Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by the Unit Owner from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be

designated by them from time to time, in writing to the Association. All notices shall be deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

- 24.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof and of any of the Exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of legal counsel to the Association or the counsel having drafted this Declaration that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 24.3 Mortgagees. Anything herein to the contrary notwithstanding (except as provided in Section 13.5 hereof), the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless actual (vs. constructive) written notice of the existence of such mortgage or lien is received by the Association.
- 24.4 Exhibits. There are hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters shall control over those hereof.
- 24.5 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefore, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefore, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities.
- 24.6 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Exhibits annexed hereto or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Florida.

- 24.7 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase or word, or other provision of this Declaration, the Exhibits annexed hereto, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 24.8 Waiver. No provisions contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce the same, without regard to the number of violations or breaches which may occur.
- 24.9 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 24.10 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium Property as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 24.11 Gender; Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 24.12 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this ____ day _____, 2011.

WITNESSES:

MARSH ISLAND DEVELOPMENT COMPANY, L.L.C., a Florida limited liability company

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____ as _____ of **MARSH ISLAND DEVELOPMENT COMPANY, L.L.C.**, a Florida limited liability company, on behalf of the corporation, () who is personally known to me OR () who produced a _____ as identification.

Notary Public, State of
My Commission Expires:

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed this 15TH day JUNE, 2011.

WITNESSES:

MARSH ISLAND DEVELOPMENT COMPANY, L.L.C., a Florida limited liability company

[Signature]
Print Name: T. W. Woff
[Signature]
Print Name: MARIA T. BATTAD

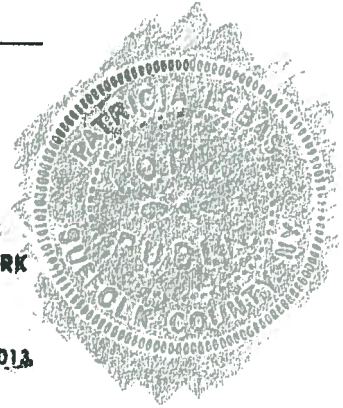
By: [Signature]
Print Name: Stephen Mann
Title: Managing Member

STATE OF NY
COUNTY OF NY

The foregoing instrument was acknowledged before me this 15TH day of JUNE, 2011, by STEPHEN MANN as MANAGING MEMBER of MARSH ISLAND DEVELOPMENT COMPANY, L.L.C., a Florida limited liability company, on behalf of the corporation, () who is personally known to me OR () who produced a _____ as identification.

[Signature]
Notary Public, State of
My Commission Expires:

PATRICIA LEBAS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01LE6133768
Qualified in Suffolk County
My Commission Expires September 19, 2013



MARSH ISLAND YACHT CLUB. A CONDOMINIUM

A PARCEL OF LAND LYING WITHIN GOVERNMENT LOT 4. SECTION 27. TOWNSHIP 31 SOUTH. RANGE 39 EAST. SAID PARCEL BEING ALL OF TRACT C. MARSH ISLAND PD. ACCORDING TO THE PLAT THEREOF. AS RECORDED IN PLAT BOOK 16. PAGE 71. OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY. LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCELS OF LAND:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 21. SAID PLAT OF MARSH ISLAND PD: THENCE NORTH 25 DEGREES 35 MINUTES 00 SECONDS EAST. A DISTANCE OF 23.31 FEET. TO THE POINT OF BEGINNING: THENCE NORTH 52 DEGREES 53 MINUTES 28 SECONDS EAST. A DISTANCE OF 83.59 FEET: THENCE SOUTH 37 DEGREES 06 MINUTES 32 SECONDS EAST. A DISTANCE OF 49.16 FEET: THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST. A DISTANCE OF 102.52 FEET: THENCE NORTH 16 DEGREES 02 MINUTES 47 SECONDS WEST. A DISTANCE OF 52.68 FEET: TO THE POINT OF BEGINNING.

AND

COMMENCE AT THE SOUTHEAST CORNER OF LOT 21. SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 57 DEGREES 18 MINUTES 49 SECONDS EAST. A DISTANCE OF 17.41 FEET. TO THE POINT OF BEGINNING: THENCE NORTH 16 DEGREES 02 MINUTES 47 SECONDS WEST. A DISTANCE OF 30.59 FEET: THENCE NORTH 75 DEGREES 08 MINUTES 59 SECONDS EAST. A DISTANCE OF 4.00 FEET: THENCE SOUTH 16 DEGREES 02 MINUTES 47 SECONDS EAST. A DISTANCE OF 52.68 FEET: THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST. A DISTANCE OF 40.45 FEET: THENCE SOUTH 70 DEGREES 49 MINUTES 29 SECONDS WEST. A DISTANCE OF 67.41 FEET: THENCE NORTH 15 DEGREES 27 MINUTES 37 SECONDS WEST. A DISTANCE OF 36.12 FEET: THENCE NORTH 31 DEGREES 06 MINUTES 59 SECONDS EAST. A DISTANCE OF 7.71 FEET: THENCE NORTH 74 DEGREES 32 MINUTES 23 SECONDS EAST. A DISTANCE OF 95.04 FEET TO THE POINT OF BEGINNING:

AND

COMMENCE AT THE SOUTHWEST CORNER OF LOT 25. SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 40 DEGREES 33 MINUTES 30 SECONDS WEST. A DISTANCE OF 14.33 FEET. TO THE POINT OF BEGINNING: THENCE SOUTH 07 DEGREES 31 MINUTES 39 SECONDS WEST. A DISTANCE OF 48.33 FEET: THENCE NORTH 82 DEGREES 28 MINUTES 21 SECONDS WEST. A DISTANCE OF 21.75 FEET: THENCE NORTH 07 DEGREES 18 MINUTES 33 SECONDS EAST. A DISTANCE OF 27.82 FEET: THENCE NORTH 54 DEGREES 20 MINUTES 50 SECONDS EAST. A DISTANCE OF 29.97 FEET TO THE POINT OF BEGINNING:

AND

COMMENCE AT THE SOUTHEAST CORNER OF TRACT "C". SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 60 DEGREES 26 MINUTES 54 SECONDS WEST. A DISTANCE OF 154.99 FEET. TO THE POINT OF BEGINNING: THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST. A DISTANCE OF 28.00 FEET: THENCE NORTH 37 DEGREES 06 MINUTES 32 SECONDS WEST. A DISTANCE OF 25.00 FEET: THENCE NORTH 52 DEGREES 53 MINUTES 28 SECONDS EAST. A DISTANCE OF 28.00 FEET: THENCE SOUTH 37 DEGREES 06 MINUTES 32 SECONDS EAST. A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING:

AND

COMMENCE AT THE SOUTHEAST CORNER OF TRACT "C". SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 71 DEGREES 22 MINUTES 23 SECONDS WEST. A DISTANCE OF 64.30 FEET. TO THE POINT OF BEGINNING: THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST. A DISTANCE OF 28.00 FEET: THENCE NORTH 37 DEGREES 06 MINUTES 32 SECONDS WEST. A DISTANCE OF 25.00 FEET: THENCE NORTH 52 DEGREES 53 MINUTES 28 SECONDS EAST. A DISTANCE OF 28.00 FEET: THENCE SOUTH 37 DEGREES 06 MINUTES 32 SECONDS EAST. A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING:

MARSH ISLAND MARINA ASBUILT LOCATIONS.GXD

EXHIBIT "A-1"
MARSH ISLAND YACHT CLUB.
A CONDOMINIUM
SHEET 1 OF 1

DAVID M. JONES
PROFESSIONAL SURVEYOR & MAPPER

2266 CORTEZ AVENUE
(772)567-9875 VERO BEACH. FL 32960

MARSH ISLAND YACHT CLUB. A CONDOMINIUM. PHASE II

A PARCEL OF LAND LYING WITHIN GOVERNMENT LOT 4, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 39 EAST, SAID PARCEL BEING ALSO A PORTION OF TRACT C, MARSH ISLAND PD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 16, PAGE 71, OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 21, SAID PLAT OF MARSH ISLAND PD; THENCE NORTH 25 DEGREES 35 MINUTES 00 SECONDS EAST, A DISTANCE OF 23.31 FEET, TO THE POINT OF BEGINNING; THENCE NORTH 52 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 83.59 FEET; THENCE SOUTH 37 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 49.16 FEET; THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 102.52 FEET; THENCE NORTH 16 DEGREES 02 MINUTES 47 SECONDS WEST, A DISTANCE OF 52.68 FEET, TO THE POINT OF BEGINNING.

MARSH ISLAND MARINA ASBUILT LOCATIONS.GXD

EXHIBIT "A-2"
MARSH ISLAND YACHT CLUB,
A CONDOMINIUM

SHEET 1 OF 5

DAVID M. JONES

PROFESSIONAL SURVEYOR & MAPPER

2266 CORTEZ AVENUE
(772)567-9875 VERO BEACH, FL 32960

MARSH ISLAND YACHT CLUB. A CONDOMINIUM. PHASE III

A PARCEL OF LAND LYING WITHIN GOVERNMENT LOT 4, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 39 EAST, SAID PARCEL BEING ALSO A PORTION OF TRACT C, MARSH ISLAND PD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 16, PAGE 71, OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 21, SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 57 DEGREES 18 MINUTES 49 SECONDS EAST, A DISTANCE OF 17.41 FEET, TO THE POINT OF BEGINNING; THENCE NORTH 16 DEGREES 02 MINUTES 47 SECONDS WEST, A DISTANCE OF 30.59 FEET; THENCE NORTH 75 DEGREES 08 MINUTES 59 SECONDS EAST, A DISTANCE OF 4.00 FEET; THENCE SOUTH 16 DEGREES 02 MINUTES 47 SECONDS EAST, A DISTANCE OF 52.68 FEET; THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 40.45 FEET; THENCE SOUTH 70 DEGREES 49 MINUTES 29 SECONDS WEST, A DISTANCE OF 67.41 FEET; THENCE NORTH 15 DEGREES 27 MINUTES 37 SECONDS WEST, A DISTANCE OF 36.12 FEET; THENCE NORTH 31 DEGREES 06 MINUTES 59 SECONDS EAST, A DISTANCE OF 7.71 FEET; THENCE NORTH 74 DEGREES 32 MINUTES 23 SECONDS EAST, A DISTANCE OF 95.04 FEET TO THE POINT OF BEGINNING:

MARSH ISLAND MARINA ASBUILT LOCATIONS.GXD

EXHIBIT "A-2"
MARSH ISLAND YACHT CLUB,
A CONDOMINIUM
SHEET 2 OF 5

DAVID M. JONES
PROFESSIONAL SURVEYOR & MAPPER

2266 CORTEZ AVENUE
VERO BEACH, FL 32960
(772)567-9875

MARSH ISLAND YACHT CLUB. A CONDOMINIUM. PHASE IV

A PARCEL OF LAND LYING WITHIN GOVERNMENT LOT 4. SECTION 27. TOWNSHIP 31 SOUTH. RANGE 39 EAST. SAID PARCEL BEING ALSO A PORTION OF TRACT C. MARSH ISLAND PD. ACCORDING TO THE PLAT THEREOF. AS RECORDED IN PLAT BOOK 16. PAGE 71. OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY. FLORIDA SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF LOT 25. SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 40 DEGREES 33 MINUTES 30 SECONDS WEST. A DISTANCE OF 14.33 FEET. TO THE POINT OF BEGINNING: THENCE SOUTH 07 DEGREES 31 MINUTES 39 SECONDS WEST. A DISTANCE OF 48.33 FEET: THENCE NORTH 82 DEGREES 28 MINUTES 21 SECONDS WEST. A DISTANCE OF 21.75 FEET: THENCE NORTH 07 DEGREES 18 MINUTES 33 SECONDS EAST. A DISTANCE OF 27.82 FEET: THENCE NORTH 54 DEGREES 20 MINUTES 50 SECONDS EAST. A DISTANCE OF 29.97 FEET TO THE POINT OF BEGINNING:

MARSH ISLAND MARINA ASBUILT LOCATIONS.GXD

EXHIBIT "A-2"
MARSH ISLAND YACHT CLUB.
A CONDOMINIUM

SHEET 3 OF 5

DAVID M. JONES

PROFESSIONAL SURVEYOR & MAPPER

2266 CORTEZ AVENUE
VERO BEACH. FL 32960
(772)567-9875

MARSH ISLAND YACHT CLUB. A CONDOMINIUM. PHASE V

A PARCEL OF LAND LYING WITHIN GOVERNMENT LOT 4, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 39 EAST, SAID PARCEL BEING ALSO A PORTION OF TRACT C, MARSH ISLAND PD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 16, PAGE 71, OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF TRACT "C", SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 60 DEGREES 26 MINUTES 54 SECONDS WEST, A DISTANCE OF 154.99 FEET, TO THE POINT OF BEGINNING; THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 28.00 FEET; THENCE NORTH 37 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 25.00 FEET; THENCE NORTH 52 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 28.00 FEET; THENCE SOUTH 37 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING:

MARSH ISLAND MARINA ASBUILT LOCATIONS.GXD

EXHIBIT "A-2"
MARSH ISLAND YACHT CLUB,
A CONDOMINIUM

SHEET 4 OF 5

DAVID M. JONES

PROFESSIONAL SURVEYOR & MAPPER

2266 CORTEZ AVENUE
(772)567-9875 VERO BEACH, FL 32960

MARSH ISLAND YACHT CLUB. A CONDOMINIUM. PHASE VI

A PARCEL OF LAND LYING WITHIN GOVERNMENT LOT 4, SECTION 27, TOWNSHIP 31 SOUTH, RANGE 39 EAST, SAID PARCEL BEING ALSO A PORTION OF TRACT C, MARSH ISLAND PD, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 16, PAGE 71, OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF TRACT "C", SAID PLAT OF MARSH ISLAND PD: THENCE SOUTH 71 DEGREES 22 MINUTES 23 SECONDS WEST, A DISTANCE OF 64.30 FEET, TO THE POINT OF BEGINNING: THENCE SOUTH 52 DEGREES 53 MINUTES 28 SECONDS WEST, A DISTANCE OF 28.00 FEET: THENCE NORTH 37 DEGREES 06 MINUTES 32 SECONDS WEST, A DISTANCE OF 25.00 FEET: THENCE NORTH 52 DEGREES 53 MINUTES 28 SECONDS EAST, A DISTANCE OF 28.00 FEET: THENCE SOUTH 37 DEGREES 06 MINUTES 32 SECONDS EAST, A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING:

MARSH ISLAND MARINA ASBUILT LOCATIONS.GXD

EXHIBIT "A-2"
MARSH ISLAND YACHT CLUB,
A CONDOMINIUM

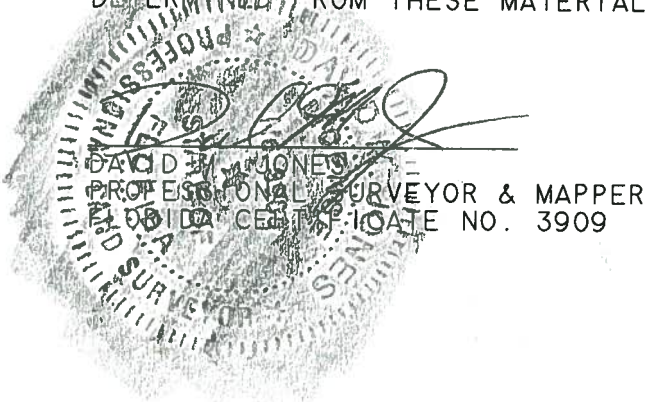
SHEET 5 OF 5

DAVID M. JONES

PROFESSIONAL SURVEYOR & MAPPER

2266 CORTEZ AVENUE
(772)567-9875 VERO BEACH, FL 32960

I HEREBY CERTIFY THAT THE CONSTRUCTION OF THE IMPROVEMENTS SHOWN HEREIN, OTHER THAN THOSE SHOWN AS "PROPOSED" IN SUBSEQUENT PHASES, ARE SUBSTANTIALLY COMPLETE SO THAT THIS MATERIAL TOGETHER WITH THE PROVISIONS OF THE DECLARATION DESCRIBING THE CONDOMINIUM PROPERTY, IS AN ACCURATE REPRESENTATION OF THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS AND SO THAT THE IDENTIFICATION, LOCATION AND DIMENSIONS OF THE COMMON ELEMENTS AND EACH UNIT CAN BE DETERMINED FROM THESE MATERIALS.



DAVID M. JONES
PROFESSIONAL SURVEYOR & MAPPER
FLORIDA CERTIFICATE NO. 3909

MARSH ISLAND MARINA ASBUILT LOCATIONS.GXD

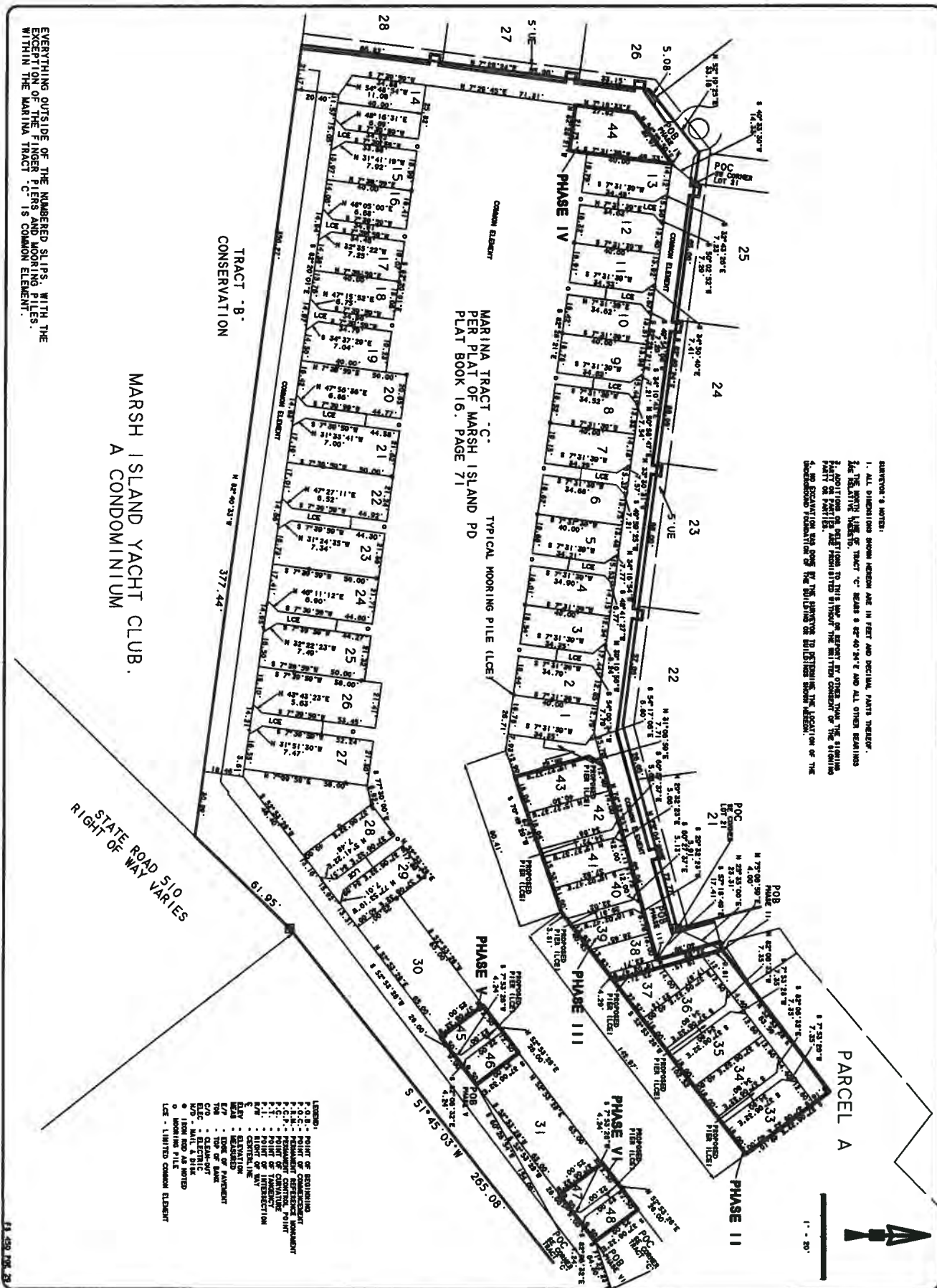
EXHIBIT "B"
MARSH ISLAND YACHT CLUB,
A CONDOMINIUM

SHEET 1 OF 3

DAVID M. JONES

PROFESSIONAL SURVEYOR & MAPPER

2266 CORTEZ AVENUE
(772)567-9875 VERO BEACH, FL 32960



OWNER'S NOTES:

1. ALL DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMAL PARTS THEREOF.
2. THE SURVEY LINES OF TRACT "C" BEARS S 27° 40' 34" E AND ALL OTHER BEARINGS.
3. ADJUSTION OF DISTANCE TO THIS MAP OR ERROR BY OTHER THAN THE SURVEYOR SHALL BE MADE BY THE OWNER AND PRESIDENT WITHOUT THE WRITTEN CONSENT OF THE SURVEYOR.
4. THE SURVEYOR'S LIABILITY FOR THE ACCURACY OF THE DIMENSIONS IS LIMITED TO THE LOCATION OF THE BOUNDARIES AND EASEMENTS SHOWN HEREON.

EVERYTHING OUTSIDE OF THE NUMBERED SLIPS WITH THE EXCEPTION OF THE EASERS AND MOORING PILES WITHIN THE MARINA TRACT "C" IS COMMON ELEMENT.

TRACT "B" CONSERVATION

MARINA TRACT "C" PER PLAT OF MARSH ISLAND PD PLAT BOOK 16, PAGE 71

MARSH ISLAND YACHT CLUB A CONDOMINIUM

STATE ROAD 510 RIGHT OF WAY VARIES

- LEGEND:**
- P.O.C. - POINT OF COMMENCEMENT
 - P.P.O.B. - POINT OF BEGINNING
 - P.R.E. - PERMANENT RESERVATION EASEMENT
 - P.C. - POINT OF CONTACT
 - P.T. - POINT OF TANGENCY
 - P.V. - POINT OF VERIFICATION
 - B.V. - BOUNDARY VERIFICATION
 - E.V. - EASEMENT VERIFICATION
 - C.L. - CENTERLINE
 - W.A. - WEATHERED AREA
 - E.V. - EDGE OF PAVEMENT
 - C.D. - CLEAR-DIRT
 - E.L.C. - ELECTRICAL
 - I.A. - IRON AND ANCHOR
 - M.P. - MOORING PILE
 - L.C.E. - LIMITED COMMON ELEMENT

DATE	11-04-10
SCALE	1" = 50'
JOB NO.	2008-001
CUSTOMER NAME	MARSH ISLAND YACHT CLUB
SHEET	2

DAVID M. JONES
 PROFESSIONAL SURVEYOR & MAPPER

2290 CORTIZ AVENUE
 VERO BEACH, FL 32909

772-1967-0972
 772-1967-0174 FAX

BOUNDARY SURVEY
 PREPARED FOR & CERTIFIED TO
MARSH ISLAND YACHT CLUB.
A CONDOMINIUM

DATE	11-04-10
SCALE	1" = 50'
JOB NO.	2008-001
CUSTOMER NAME	MARSH ISLAND YACHT CLUB
SHEET	2

N110000004967

Florida Department of State
Division of Corporations
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FLORIDA PROFIT/NON PROFIT CORPORATION
Marsh Island Yacht Club Condominium Association, Inc

Certificate of Status	0
Certified Copy	0
Page Count	11
Estimated Charge	\$70.00

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TALLAHASSEE, FLORIDA

2011 MAY 20 PM 4: 51

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DIVISION OF CORPORATIONS

11 MAY 20 PM 4: 58

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Florida Department of State

**ARTICLES OF INCORPORATION
OF
MARSH ISLAND YACHT CLUB
CONDOMINIUM ASSOCIATION, INC.**

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

2011 MAY 20 PM 4: 51

FILED

The undersigned incorporator, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

ARTICLE 1

NAME

The name of the corporation shall be MARSH ISLAND YACHT CLUB CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

ARTICLE 2

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located in Indian River County, Florida, and known as MARSH ISLAND YACHT CLUB, A CONDOMINIUM (the "Condominium") wherein the Association is designated as the "Association."

ARTICLE 3

DEFINITIONS

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of the Condominium to be recorded in the Public Records of Indian River County, Florida, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE 4

POWERS AND DUTIES

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

- 4.1 **General.** The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.
- 4.2 **Enumeration.** The Association shall have all of the powers and duties set forth in the Act, and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:
- (a) To make and collect Assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
 - (b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property.
 - (c) To maintain, repair, replace, reconstruct, add to and operate all Condominium Property, and other property acquired or leased by the Association.
 - (d) To purchase insurance upon all Condominium Property and insurance for the protection of the Association, its officers, directors, committee members and Unit Owners.
 - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of all Condominium Property.
 - (f) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
 - (g) To enforce by legal means the provisions of the Act, each Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium Property.
 - (h) To contract for the management and maintenance of all Condominium Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of various records, enforcement of rules and maintenance, repair and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments,

promulgation of rules and execution of contracts on behalf of the Association.

- (i) To perform all rights and obligations of the Association under the Easement Agreement.
- (j) To employ personnel to perform the services required for the proper operation of the Association.

4.3 Additional Condominiums. In the event that the Developer or any affiliate, successor or assignee thereof creates one or more condominium(s) per the conditions set forth in the Declaration within any portion of the Marina Basin by virtue of a declaration of condominium which names the Association as the "Association" thereunder, then the Association shall have the power and duty to operate such condominium as fully as it does so as to the Condominium under the Declaration, these Articles of Incorporation and the Association's By-Laws. In such case, the defined terms used in these Articles of Incorporation and the By-Laws (e.g., Units, Condominium and Members) shall apply to their counterpart terms in such additional condominium(s). Also in such event, all units in all condominiums operated by the Association shall share equally in all assets, liability, common surplus and common expenses which are not specific to their individual condominiums.

4.4 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.

4.5 Distribution of Income: Dissolution. The Association shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Act.

4.6 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

ARTICLE 6

MEMBERS

5.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of a Condominium, shall also consist of those who were

members at the time of such termination, and their successors and assigns.

- 5.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be the number of votes which may be cast on behalf of each Unit, as provided in the Declaration of Condominium, which votes shall be exercised or cast in the manner provided by the Declaration and By-Laws.
- 5.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

ARTICLE 6

TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 7

INCORPORATOR

The name and address of the Incorporator of this Corporation are:

NAME

ADDRESS

Charles W. Edgar, III

Cherry, Edgar & Smith, P.A.
8409 North Military Trail, Suite 123
Palm Beach Gardens, FL 33410

ARTICLE 8

OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

President:

John Von Hagen 333 17th Street
Suite 2L
Vero Beach, FL 32960

Vice President:

George Allen 333 17th Street
Suite 2L
Vero Beach, FL 32960

Secretary-Treasurer:

Robert Lyles 333 17th Street
Suite 2L
Vero Beach, FL 32960

ARTICLE 9

DIRECTORS

- 9.1 **Number and Qualification.** The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors, other than designees of Developer, must be members of the Association or duly authorized representatives of corporate, partnership, trust or other business entity Owners of Units.
- 9.2 **Duties and Powers.** All of the duties and powers of the Association existing under the Act, each Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.
- 9.3 **Election; Removal.** Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.
- 9.4 **Term of Developer's Directors.** Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.
- 9.5 **First Directors.** The names and addresses of the members of the first Board

of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
John Von Hagen	333 17 th Street Suite 2L Vero Beach, FL 32960
George Allen	333 17 th Street Suite 2L Vero Beach, FL 32960
Robert Lyles	333 17 th Street Suite 2L Vero Beach, FL 32960

ARTICLE 10

INDEMNIFICATION

- 10.1 Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, committee member, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he reasonably believed to be not in or opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.
- 10.2 Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above, or in

defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

- 10.3 **Advances.** Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article 10.
- 10.4 **Miscellaneous.** The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.
- 10.5 **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.
- 10.6 **Amendment.** Anything to the contrary herein notwithstanding, the provisions of this Article 10 may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

ARTICLE 11

BY-LAWS

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

ARTICLE 12

AMENDMENTS

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

- 12.1 **Notice.** Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing the approval is delivered to the Secretary at or prior to the meeting. The approval must be by not less than a majority of the votes of all of the members of the Association represented at a meeting at which a quorum thereof has been attained and by not less than a majority of the entire Board of Directors.
- 12.3 **Limitation.** No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 4.3, 4.4 or 4.5 of Article 4, entitled "Powers", without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to Developer, or an affiliate of Developer, unless Developer shall join in the execution of the amendment. No amendment to this paragraph 12.3 shall be effective.
- 12.4 **Recording.** A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Indian River County, Florida.

ARTICLE 13

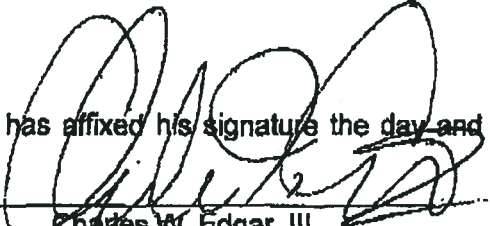
**INITIAL REGISTERED OFFICE:
ADDRESS AND NAME OF REGISTERED AGENT
PRINCIPAL OFFICE**

The initial registered office of this corporation shall be at 8409 North Military Trail, Suite 123, Palm Beach Gardens, Florida 33410 with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Charles W. Edgar, III, Esq., Cherry, Edgar & Smith, P.A. 8409 North Military Trail, Suite 123, Palm Beach Gardens, Florida 33410.

Until changed, the principal office and mailing address of the Association shall be

333 17th Street, Suite 2L, Vero Beach, FL 32960.

IN WITNESS WHEREOF, the Incorporator has affixed his signature the day and year set forth below.



Charles W. Edgar, III

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20th day of May, 2011, by Charles W. Edgar, III, who is personally known to me.

Notary Public, State of Florida

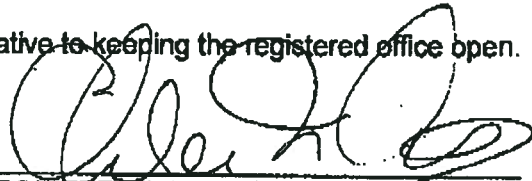
[Notary Seal]

**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE
FOR THE SERVICE OF PROCESS WITHIN THIS STATE,
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED.**

In compliance with the laws of Florida, the following is submitted:

First – That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing articles of incorporation, in the County of Indian River, State of Florida, the corporation has named Alan Romano located at 333 17th Street, Suite 2L, Vero Beach, FL 32960 as its statutory agent.

Having been named the statutory agent of said corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.



REGISTERED AGENT

DATED this 20th day of May, 2011

SECRETARY OF STATE
TALLAHASSEE, FL ORDA

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EXHIBIT "D"
BY-LAWS OF
MARSH ISLAND YACHT CLUB CONDOMINIUM ASSOCIATION, INC.

*A corporation not for profit organized
under the laws of the State of Florida*

1. Identity. These are the By-Laws of **MARSH ISLAND YACHT CLUB CONDOMINIUM ASSOCIATION, INC.**, incorporated under the laws of the State of Florida, and organized for the purposes set forth in its Articles of Incorporation.
 - 1.1 Fiscal Year. The fiscal year of the Association shall be the twelve month period commencing January 1st of each year and terminating December 31st of the succeeding year.
 - 1.2 Seal. The seal of the Association shall bear the name of the corporation, the word "Florida", the words "Corporation Not for Profit", and the year of incorporation.
2. Definitions. For convenience, these By-Laws shall be referred to as the "By-Laws" and the Articles of Incorporation of the Association as the "Articles". The other terms used in these By-Laws shall have the definitions stated herein or the same definitions and meanings as those set forth in the Declaration of **Marsh Island Yacht Club, a Condominium (the "Declaration")**, unless herein provided to the contrary, or unless the context otherwise requires. As used herein, the term "Member" shall be synonymous with the term "Unit Owner" in the Declaration.
3. Members.
 - 3.1 Annual Meeting. The annual Members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than twelve (12) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors, and to transact any other business authorized to be transacted by the Members, or as stated in the notice of the meeting sent to Unit Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of December following the year in which the Declaration is recorded.
 - 3.2 Special Meetings. Special Members' meetings shall be held at such places as provided herein for annual meetings, and may be called by the President or by a majority of the Board of Directors of the Association, and must be

called by the President or Secretary upon receipt of a written request from a majority of the Members of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting. Special meetings may also be called by Unit Owners in the manner provided for in the Act. Notwithstanding the foregoing: (i) as to special meetings regarding the adoption of the Condominium's estimated operating budget, reference should be made to Section 10 of these By-Laws; and (ii) as to special meetings regarding recall of Board Members, reference should be made to Section 4.3 of these By-Laws.

3.3 Participation by Unit Owners. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Unit Owners shall have the right to speak at the annual and special meetings of the Unit Owners, Committee meetings and Board meetings with reference to all designated agenda items. A Unit Owner does not have the right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit an Owner to speak on such items in its discretion. Every Unit Owner who desires to speak at a meeting may do so, provided that the Owner has filed a written request with the Secretary of the Association not less than eight (8) hours prior to the scheduled time for commencement of the meeting. Unless waived by the chairman of the meeting (which may be done in the chairman's sole and absolute discretion and without being deemed to constitute a waiver as to any other subsequent speakers), all Unit Owners speaking at a meeting shall be limited to a maximum of three (3) minutes per speaker. Any Unit Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board:

- (a) The only audio and video equipment and devices which Unit Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions;
- (b) Audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting.
- (c) Anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and
- (d) At least eight (8) hours prior written notice shall be given to the Secretary of the Association by any Unit Owner desiring to make an audio or video taping of the meeting.

3.4 Notice of Meeting; Waiver of Notice. Notice of a meeting of Members (annual or special), stating the time and place and the purpose(s) for which

the meeting is called, shall be given by the President or Secretary. A copy of the notice shall be posted at a conspicuous place on the Condominium Property. The notice of the annual meeting shall be hand delivered or sent by regular mail to each Unit Owner, unless the Unit Owner waives in writing the right to receive notice of the annual meeting by mail. The delivery or mailing shall be to the address of the member as it appears on the roster of Members. Where a Unit is owned by more than one person, the Association shall provide notice, for meetings and all other purposes, to that one address as one or more of the Owners of the Unit shall so advise the Association in writing, or if no address is given or if the Owners disagree, notice shall be sent to the address for the Owner as set forth on the deed of the Unit. The posting and mailing of the notice for either special or annual meetings, which notice shall incorporate an identification of agenda items, shall be effected not less than fourteen (14) days, nor more than thirty-four (34) days, prior to the date of the meeting. The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of Members' meetings shall be posted.

Notice of specific meetings may be waived before or after the meeting and the attendance of any member (or person authorized to vote for such member), either in person or by proxy, shall constitute such Member's waiver of notice of such meeting, and waiver of any and all objections to the place of the meeting, the time of the meeting or the manner in which it has been called or convened, except when his (or his authorized representative's) attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called.

An officer of the Association, or the manager or other person providing notice of the meeting, shall provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the Association, affirming that notices of meetings were posted and mailed or hand delivered in accordance with this Section and Section 718.112(2)(d) of the Act, to each Unit Owner at the appropriate address for such Unit Owner. No other proof of notice of a meeting shall be required.

- 3.5 Quorum. A quorum at Members' meetings shall be attained by the presence, either in person or by proxy (limited or general), of persons entitled to cast in excess of 33 1/3% of the votes of Members entitled to vote at the subject meeting. In the event that the Association operates more than one Condominium and the meeting only pertains to one (1) Condominium (or, if the Association operates more than two (2) Condominiums and the meeting pertains to less than all of the Condominiums so operated), then the former requirements shall apply to the Members in the Condominium(s) to which the meeting pertains,

3.6 Voting.

- (a) Number of Votes. In any meeting of Members, the Owners of Units shall be entitled to cast one (1) vote per Unit owned which may be personally cast by the Member for a person authorized to vote per Subsection (c), below.

- (b) Majority Vote. The acts approved by a majority of the votes present in person or by proxy at a meeting at which a quorum shall have been attained shall be binding upon all Unit Owners for all purposes, except where otherwise provided by law, the Declaration, the Articles or these By-Laws, except that Directors shall be elected by plurality vote. As used in these By-Laws, the Articles or the Declaration, the terms "majority of the Unit Owners" and "majority of the Members" shall mean a majority of the votes entitled to be cast by the Members and not a majority of the Members themselves and shall further mean more than 50% of the then total authorized votes present in person or by proxy and voting at any meeting of the Unit Owners at which a quorum shall have been attained. Similarly, if some greater percentage of Members is required herein or in the Declaration or Articles, it shall mean such greater percentage of the votes of Members and not of the Members themselves. If the vote in question is made by Members who are Owners in fewer than all of the Condominiums operated by the Association, then the foregoing requirement shall apply only to the votes of those Owners. This provision shall likewise apply to written actions without a meeting per Section 3.11 of these By-Laws.

- (c) Voting Member. If a Unit is owned by one person, that person's right to vote shall be established by the roster of Members. If a Unit is owned by more than one person, those persons (including husbands and wives) shall decide among themselves as to who shall cast the vote of the Unit. In the event that those persons cannot so decide, no vote shall be cast. A person casting a vote for a Unit shall be presumed to have the authority to do so unless the President or the Board of Directors is otherwise notified. If a Unit is owned by a corporation or other business entity, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by an appropriate officer of the corporation, or other person authorized by law to bind the entity, and filed with the Secretary of the Association. Such person need not be a Unit Owner. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote for a Unit may be revoked by any record owner of an undivided interest in the Unit. If a

certificate designating the person entitled to cast the vote for a Unit for which such certificate is required is not on file or has been revoked, the vote attributable to such Unit shall not be considered in determining whether a quorum is present, nor for any other purpose, and the total number of authorized votes in the Association shall be reduced accordingly until such certificate is filed.

- 3.7 Proxies. Votes to be cast at meetings of the Association membership may be cast in person or by proxy. Except as provided herein, Unit Owners may not vote by general proxy, but may vote by limited proxies. Limited proxies shall be permitted for votes taken to: waive or reduce reserves; waive financial statements; amend the Declaration, Articles or By-Laws; or for any other matter requiring or permitting a vote of Unit Owners. General proxies may be used for other matters for which limited proxies are not required and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. A proxy may be made by any person entitled to vote, but shall only be valid for the specific meeting for which originally given and any lawful adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the person executing it. A proxy must be in writing, signed by the person authorized to cast the vote for the Unit (as above described), name the person(s) voting by proxy and the person authorized to vote for such person(s) and filed with the Secretary before the appointed time of the meeting, or before the time to which the meeting is adjourned. Each proxy shall contain the date, time and place of the meeting for which it is given and, if a limited proxy, shall set forth the matters on which the proxy holder may vote and the manner in which the vote is to be cast. There shall be no limitation on the number of proxies which may be held by any person (including a designee of the Developer). If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in its place. If such provision is not made, substitution is not permitted.
- 3.8 Adjourned Meetings. If any proposed meeting cannot be organized because a quorum has not been attained, the Members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting. Except as required above, proxies given for the adjourned meeting shall be valid for the newly scheduled meeting unless revoked by the member having given the proxy.
- 3.9 Order of Business. If a quorum has been attained, the order of business at annual Members' meetings, and, if applicable, at other Members' meetings, shall be:

- (a) Call to order by President;
- (b) Processing and counting of ballots for positions on the Board of Directors, if applicable;
- (c) Appointment by the President of a chairman of the meeting (who need not be an officer, Member or Director of the Association);
- (d) Proof of notice of the meeting or waiver of notice;
- (e) Reading of minutes;
- (f) Reports of officers;
- (g) Reports of committees;
- (h) Unfinished business;
- (i) New business;
- (j) Adjournment.

Items (c) through (j) may be waived in whole or in part or taken up in different order by direction of the chairman.

3.10 Minutes of Meeting. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives and Board Members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

3.11 Action Without A Meeting. Anything to the contrary herein notwithstanding, to the extent lawful any action required or which may be taken at any annual or special meeting of Members, may be taken without a meeting, without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the Members (or persons authorized to cast the vote of any such Members as elsewhere herein set forth) having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting of Members at which all Members (or authorized persons) entitled to vote thereon were present and voted. In order to be effective, the action must be evidenced by one or more written consents describing the action taken, dated and signed by approving Members having the requisite number of votes and entitled to vote on such action, and delivered to the Secretary of the Association, or other authorized

agent of the Association. Written consent shall not be effective to take the corporate action referred to in the consent unless signed by Members having the requisite number of votes necessary to authorize the action within sixty (60) days of the date of the earliest dated consent and delivered to the Association as aforesaid. Any written consent may be revoked prior to the date the Association receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the Secretary of the Association, or other authorized agent of the Association. Within ten (10) days after obtaining such authorization by written consent, notice must be given to Members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. A consent signed in accordance with the foregoing has the effect of a meeting vote and may be described as such in any document.

4. Directors.

- 4.1 Membership; Number of Directors. The affairs of the Association shall be governed by a Board of not less than three (3) nor more than five (5) Directors, the exact number to be determined by a majority vote of the Board from time to time. Directors must be natural persons who are 18 years of age or older but need not be Unit Owners. Directors may not vote at Board meetings by proxy or by secret ballot except that a secret ballot may be used to elect officers. The Board of Directors may, by a majority vote, elect to expand the number of Directors to five (5), or if such change was previously made, to contract the number of Directors to three (3), but such contraction shall not be effective under (a) it is by the same number as there are vacant seats on the Board or (b) the next election of the Directors.
- 4.2 Election of Directors. Members of the Board of Directors shall be elected in the manner provided in Section 718.112(2)(d)(3) of the Act. As provided in the Act, though, such election procedures may be changed by amending these By-Laws and shall not apply if there are no more candidates for election to the Board of Directors than there are vacancies on the Board to be filled.
- 4.3 Vacancies and Removal.
- (a) Except as to vacancies resulting from removal of Directors by Members (as addressed in subsection (b) below), vacancies in the Board of Directors occurring between annual meetings of Members shall be filled by the remaining Directors at any Board meeting, provided that all vacancies in Directorships to which Directors were appointed by the Developer shall be filled by the Developer without the necessity of any meeting.

- (b) Any Director elected by the Members (other than the Developer) may be removed by concurrence of a majority of all of the voting interests of the Members, which removal shall be at a special meeting of Members called for that purpose or by written agreement signed by a majority of all voting interests. The vacancy in the Board of Directors so created shall be filled by the Members at a special meeting of the Members called for such purpose, or by the Board of Directors, as and when permitted by the Act. The conveyance of all Units owned by a Director (or the business entity through which the Director qualified) in the Condominium (other than appointees of the Developer or Directors who were not Unit Owners) shall constitute the resignation of such Director.
- (c) The removal of Directors, other than those appointed by the Developer, shall only be accomplished in accordance with the procedures set forth in the Act including, without limitation, with respect to notices of meetings, voting and written agreements.
- (d) Anything to the contrary herein notwithstanding, no Directors named by the Developer shall be subject to removal by Members other than the Developer. The first Directors and Directors replacing them may be removed and replaced by the Developer without the necessity of any meeting by written notice to the Association. Likewise, no Directors elected by non-Developer Unit Owners shall be subject to removal by the Developer.
- (e) If a vacancy on the Board of Directors results in the inability to obtain a quorum of Directors in accordance with these By-Laws, any Owner may apply to the Circuit Court within whose jurisdiction the Condominium lies for the appointment of a receiver to manage the affairs of the Association. At least thirty (30) days prior to applying to the Circuit Court, the Unit Owner shall mail to the Association and post in a conspicuous place on the Condominium Property a notice describing the intended action and giving the Association an opportunity to fill the vacancy(ies) in accordance with these By-Laws. If, during such time, the Association fails to fill the vacancy(ies), the Unit Owner may proceed with the petition. If a receiver is appointed, the Association shall be responsible for the salary of the receiver, court costs and attorneys' fees. The receiver shall have all powers and duties of a duly constituted Board of Directors, and shall serve until the Association fills the vacancy(ies) on the Board sufficient to constitute a quorum in accordance with these By-Laws.

4.4 Term. Except as provided herein to the contrary, the term of each Director's service shall extend until the next annual meeting of the Members and

subsequently until his successor is duly elected and has taken office, or until he is removed in the manner elsewhere provided. Notwithstanding the foregoing, any Director designated by the Developer shall serve at the pleasure of the Developer and may be removed and replaced by the Developer at any time.

- 4.5 Organizational Meeting. The organizational meeting of newly-elected or appointed Directors shall be held within a reasonable time after their election or appointment. The Directors calling the organizational meeting shall give at least forty-eight (48) hours advance notice thereof, stating the time and place of the meeting in accordance with the Act.
- 4.6 Meetings. Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of meetings shall be given to each Director, personally or by mail, telephone or facsimile, and shall be transmitted at least two (2) days prior to the meeting. Meetings of the Board of Directors and any Committee thereof (as herein defined) at which a quorum of the Members of that Committee are present shall be open to all Unit Owners, except when subject to attorney-client privilege. Any Unit Owner may tape record or videotape meetings of the Board, in accordance with the rules of the Division and the Association. The right to attend Board meetings includes the right to speak at such meetings with respect to all designated agenda items. The Association may adopt reasonable rules governing the frequency, duration and manner of Unit Owner statements. Adequate notice of such meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Condominium Property at least forty-eight (48) continuous hours preceding the meeting, except in the event of an emergency. Notwithstanding the foregoing, written notice of any meeting of the Board at which non-emergency special assessments, or at which amendments to rules regarding Unit use will be considered shall be mailed or delivered to all Unit Owners and posted conspicuously on the Condominium property not less than fourteen (14) days prior to the meeting. Evidence of compliance with this fourteen (14) day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the Association.

The Board shall adopt by rule, and give notice to Unit Owners of, a specific location on the Condominium Property upon which all notices of Board and/or Committee meetings shall be posted.

Notwithstanding the foregoing, items not included in the notice of the Board meeting may be taken up on an emergency basis by at least a majority plus one of the Directors, but shall be noticed and ratified at the next regular meeting of the Board.

Special meetings of the Directors may be called by the President and must be called by the President or Secretary at the written request of one-third (1/3) of the Directors or where required by the Act.

Meetings of the Board may be held by telephone, provided that unless such meeting is subject to attorney-client privilege, a speakerphone must be available at a location designated in the notice of the meeting so as to enable Unit Owners to hear and, to the extent permitted, speak during such meeting or a conference call-in service must be used for such purpose.

4.7 Waiver of Notice. Any Director may waive notice of a meeting before or after the meeting and that waiver shall be deemed equivalent to the due receipt by said Director of notice. Attendance by any Director at a meeting shall constitute a waiver of notice of such meeting, and a waiver of any and all objections to the place of the meeting, to the time of the meeting or the manner in which it has been called or convened, except when a Director states at the beginning of the meeting, or promptly upon arrival at the meeting, any objection to the transaction of affairs because the meeting is not lawfully called or convened.

4.8 Quorum and Voting. A quorum at Directors' meetings shall consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except when approval by a greater number of Directors is specifically required by the Declaration, the Articles or these By-Laws.

Each Director shall have one (1) vote on all matters coming before the Board, such vote to be cast only by the Director (i.e., not by proxy) and to be recorded in the minutes of the Board meeting at which it is cast, except that officers of the Association may be elected by secret ballot.

4.9 Adjourned Meetings. If, at any proposed meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present, provided notice of such newly scheduled meeting is given as required hereunder. At any newly scheduled meeting, any business that might have been transacted at the meeting as originally called may be transacted as long as notice of such business to be conducted at the rescheduled meeting is given, if required (e.g., with respect to budget adoption).

4.10 Joinder in Meeting by Approval of Minutes. The joinder of a Director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the approval of that Director of the business conducted at the

meeting, but such joinder shall not allow the applicable Director to be counted as being present for purposes of quorum.

- 4.11 Presiding Officer. The presiding officer at the Directors' meetings shall be the President (who may, however, designate any other person to preside, which person need not be a member, officer or Director).
- 4.12 Order of Business. If a quorum has been attained, the order of business at Directors' meetings shall be:
- (a) Proof of due notice of meeting;
 - (b) Reading and disposal of any unapproved minutes;
 - (c) Reports of officers and committees;
 - (d) Election of officers;
 - (e) Unfinished business;
 - (f) New business;
 - (g) Adjournment.

Such order may be waived in whole or in part by direction of the presiding officer who shall be the President or the President's appointee who to conduct the meeting and who the President may select need not be , Director or Member of the Association.

- 4.13 Minutes of Meetings. The minutes of all meetings of the Board of Directors shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board Members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.
- 4.14 Committees. The Board may by resolution also create Committees and appoint persons to such Committees and vest in such Committees such powers and responsibilities as the Board shall deem advisable.

As used herein, the term "Committee" shall, for purposes of notices of meetings and the rights of unit owners with respect to meetings, pertain to those committees meeting the definition thereof set forth in the Act; provided, however, that this shall not prevent the Board of Directors from forming other committees.

4.15 Proviso. Notwithstanding anything to the contrary contained in this Section 4.15 or otherwise, the Board shall consist of three Directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the Members of the Board of Directors until Unit Owners other than the Developer own fifteen (15%) percent or more of the Units in the Condominium. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect not less than one-third (1/3) of the Members of the Board of Directors. Unit Owners other than the Developer are entitled to elect not less than a majority of the Members of the Board of Directors upon the first to occur of: (a) three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers; (b) ninety (90) days after ninety percent (90%) of such Units have been conveyed to purchasers; (c) when all of the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business; (d) when some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business or (e) seven (7) years after the date the Declaration is recorded. The Developer is entitled (but not obligated) to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business five percent (5%) of the Units that will be operated ultimately by the Association.

The Developer may transfer control of the Association to Unit Owners other than the Developer prior to such dates in its sole discretion by causing enough of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Developer to elect Directors and assume control of the Association. Provided at least seventy (70) days' notice of Developer's decision to cause its appointees to resign is given to Unit Owners, neither the Developer nor such appointees shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Developer refuse or fail to assume control.

Within seventy-five (75) days after the Unit Owners other than the Developer are entitled to elect a member or members of the Board of Directors, or sooner if the Developer has elected to accelerate such event as aforesaid, the Association shall call, and give not less than sixty (60) days' notice of an election for the members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

At the time the Unit Owners other than the Developer elect a majority of the members of the Board of Directors of the Association, the Developer shall relinquish control of the Association and such Unit Owners shall accept control. At that time (except as to subparagraph (g), which may be ninety (90) days thereafter) Developer shall deliver to the Association, at Developer's expense, all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, the following items, if applicable to the Condominium:

- (a) The original or a photocopy of each recorded Declaration of Condominium and all amendments thereto. If a photocopy is provided, the Developer must certify by affidavit that it is a complete copy of the actual recorded Declaration.
- (b) A certified copy of the Articles of Incorporation of the Association.
- (c) A copy of the By-Laws of the Association.
- (d) The minute book, including all minutes, and other books and records of the Association.
- (e) Any rules and regulations which have been adopted.
- (f) Resignations of resigning officers and Board members who were appointed by the Developer.
- (g) The financial records, including financial statements of the association, and source documents from the incorporation of the Association through the date of the turnover. The records shall be audited for the period from the incorporation of the Association or from the period covered by the last audit, if an audit has been performed for each fiscal year since the incorporation of the Association, by an independent certified public accountant. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards as prescribed by the Florida Board of Accountancy. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for Association purposes, and billings, cash receipts and related records to determine that the Developer was charged and paid the proper amounts of Assessments.
- (h) Association funds or the control thereof.

- (i) All tangible personal property that is the property of the Association or is or was represented by the Developer to be part of the Common Elements or is ostensibly part of the Common Elements, and an inventory of such property.
- (j) A copy of the plans and specifications utilized in the construction or remodeling of Improvements and the supplying of equipment, and for the construction and installation of all mechanical components serving the Improvements and the Condominium Property, with a certificate, in affidavit form, of an officer of the Developer or an architect or engineer authorized to practice in Florida, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium Property and the construction and installation of the mechanical components serving the Improvements and the Condominium Property.
- (k) A list of the names and addresses of all contractors, subcontractors and suppliers, of which Developer had knowledge at any time in the development of the Condominium, utilized in the construction or remodeling of the improvements and the landscaping of the Condominium and/or Association Property.
- (l) Insurance policies.
- (m) Copies of any Certificates of Occupancy or Completion (or equivalent, as applicable) which may have been issued for the Condominium Property.
- (n) Any other permits issued by governmental bodies applicable to the Condominium Property in force or issued within one (1) year prior to the date the Unit Owners take control of the Association.
- (o) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.
- (p) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Developer's records.
- (q) Leases of the Common Elements and other leases to which the Association is a party, if applicable.
- (r) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Asso-

ciation or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

- (s) All other contracts to which the Association is a party.
- (t) The report pertaining to required maintenance, useful life and replacement costs as provided for in Section 718.301(4)(p) of the Act.

4.17 Unit Owner Inquiries. When a Unit Owner files a written inquiry by certified mail with the Board of Directors, the Board shall respond to such inquiry within thirty (30) days of its receipt thereof by giving a substantive response thereto or by notifying the Unit Owner that a legal opinion or the advice of the Division has been requested. If the advice of the Division is requested, the Board shall provide a substantive response to the inquiring Unit Owner within ten (10) days of its receipt of such advice. If a legal opinion is sought by the Board, it shall provide a substantive response within sixty (60) days of its receipt of the inquiry. The Board's failure to act within thirty (30) days or to notify the Unit Owner within thirty (30) days after the action taken shall preclude the Association from recovering attorneys' fees and costs in any subsequent litigation, administrative proceeding or arbitration arising out of the complaint.

5. Authority of the Board.

5.1 Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may take all acts, through the proper officers of the Association, in executing such powers, except such acts which by law, the Declaration, the Articles or these By-Laws may not be delegated to the Board of Directors by the Unit Owners. Such powers and duties of the Board of Directors shall include, without limitation (except as limited elsewhere herein), the following:

- (a) Operating and maintaining all Common Elements.
- (b) Determining the expenses required for the operation of the Association and the Condominium.
- (c) Employing and dismissing the personnel necessary for the maintenance and operation of the Condominium Property.
- (d) Adopting and amending rules and regulations concerning the details of the operation and use of the Condominium and Association Property.

- (e) Maintaining bank accounts on behalf of the Association and designating the signatories required therefor.
- (f) Purchasing, leasing or otherwise acquiring title to, or an interest in, property in the name of the Association, or its designee, for the use and benefit of its Members. The power to acquire personal property shall be exercised by the Board and the power to acquire real property shall be exercised as described herein and in the Declaration.
- (g) Purchasing, leasing or otherwise acquiring Units or other property, including, without limitation, Units at foreclosure or other judicial sales, all in the name of the Association, or its designee.
- (h) Selling, leasing, mortgaging or otherwise dealing with Units acquired, and subleasing Units leased, by the Association, or its designee.
- (i) Organizing corporations and appointing persons to act as designees of the Association in acquiring title to or leasing Units or other property.
- (j) Obtaining and reviewing insurance for the Condominium and Association Property.
- (k) Making repairs, additions and improvements to, or alterations of, Condominium Property, and repairs to and restorations of Condominium Property in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (l) Enforcing obligations of the Unit Owners, allocating receipts and expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Condominium.
- (m) Levying fines against appropriate Unit Owners for violations of the rules and regulations established by the Association to govern the conduct of such Unit Owners. No fine shall be levied except after giving reasonable notice and opportunity for a hearing to the affected Unit Owner and, if applicable, his tenant, licensee or invitee. No fine may exceed \$100.00 per violation, however, a fine may be levied on the basis of each day of a continuing violation with a single notice and opportunity for hearing, provided however, that no such fine shall in the aggregate exceed \$1,000.00. No fine shall become a lien upon a Unit.

- (n) Borrowing money on behalf of the Association or the Condominium when required in connection with the operation, care, upkeep and maintenance of Common Elements (except for anticipated expenses which shall be assessed to Unit Owners on Common Expenses) or the acquisition of real property, and granting security interests in Association owned tangible and/or intangible property. If any sum borrowed by the Board of Directors on behalf of the Condominium pursuant to the authority contained in this subparagraph (n) is not repaid by the Association, a Unit Owner who pays to the creditor such portion thereof as his interest in his Common Elements bears to the interest of all the Unit Owners in the Common Elements shall be entitled to obtain from the creditor a release of any judgment or other lien which said creditor shall have filed or shall have the right to file against, or which will affect, such Owner's Unit.
- (o) Subject to the provisions of the Act (unless waived as provided therein), contracting for the management and maintenance of the Condominium Property and authorizing a duly licensed management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair, and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, the Articles, these By-Laws and the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (p) At its discretion, but within the parameters of the Act, authorizing Unit Owners or other persons to use portions of the Common Elements or Association Property for private parties and gatherings and imposing reasonable charges for such private use.
- (q) The limited power to convey, in the name of the Association, a portion of the Common Elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles, these By-Laws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a Florida corporation not for profit.

- (s) Contracting with and creating or joining in the creation of special taxing districts, joint councils and the like.

6. Officers.

- 6.1 Executive Officers. The executive officers of the Association shall be a President, a Vice-President, a Treasurer and a Secretary (none of whom need be Directors), all of whom shall be elected by the Board of Directors and who may be peremptorily removed at any meeting by concurrence of a majority of all of the Directors. A person may hold more than one office. No person shall sign an instrument or perform an act in the capacity of more than one office. The Board of Directors from time to time shall elect such other officers and designate their powers and duties as the Board shall deem necessary or appropriate to manage the affairs of the Association. Officers, other than designees of the Developer-appointed Board of Directors, must be Unit Owners (or authorized representatives of business entity or trust Unit Owners).
- 6.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties that are usually vested in the office of president of an association.
- 6.3 Vice-President. The Vice-President shall exercise the powers and perform the duties of the President in the absence or disability of the President. He also shall assist the President and exercise such other powers and perform such other duties as are incident to the office of the vice president of an association and as may be required by the Directors or the President.
- 6.4 Secretary. The Secretary shall keep the minutes of all proceedings of the Directors and the Members. The Secretary shall attend to the giving of all notices to the Members and Directors and other notices required by law. The Secretary shall have custody of the seal of the Association and shall affix it to instruments requiring the seal when duly signed. The Secretary shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of the secretary of an association and as may be required by the Directors or the President.
- 6.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep books of account for the Association in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the Board of Directors for examination at reasonable times. The Treasurer shall submit a treasurer's report to the Board of Directors at reasonable intervals and shall perform all other duties

incident to the office of treasurer and as may be required by the Directors or the President. All monies and other valuable effects shall be kept for the benefit of the Association in such depositories as may be designated by a majority of the Board of Directors.

7. Fiduciary Duty. The officers and Directors of the Association have a fiduciary relationship to the Unit Owners. An officer, Director or manager employed by the Association shall not solicit, offer to accept, or accept any thing or service of value for which consideration has not been provided for his own benefit or that of his immediate family, from any person providing or proposing to provide goods or services to the Association. Any such officer, Director or manager who knowingly so solicits, offers to accept or accepts any thing or service of value shall, in addition to all other rights and remedies of the Association and Unit Owners, be subject to a civil penalty in accordance with the Act. Notwithstanding the foregoing, this paragraph shall not prohibit an officer, Director or manager from accepting services or items received in connection with trade fairs or education programs.
8. Compensation. Neither Directors nor officers shall receive compensation for their services as such, but this provision shall not preclude the Board of Directors from employing a Director or officer as an employee of the Association, nor preclude contracting with a Director or officer for the management of the Condominium or for any other service to be supplied by such Director or officer. Directors and officers shall be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.
9. Resignations. Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Units owned by any Director or officer (other than appointees of the Developer) shall constitute a written resignation of such Director or officer.
10. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration and Articles shall be supplemented by the following provisions:
 - 10.1 Budget.
 - (a) Adoption by Board; Items. The Board of Directors shall from time to time, and at least annually, prepare an annual budget (which shall detail all accounts and items of expense and contain at least all items set forth in Section 718.504(21) of the Act), determine the amount of Assessments payable by the Unit Owners to meet the expenses of the Condominium and the Association and allocate and assess such

expenses among the Unit Owners in accordance with the provisions of the Declaration. In addition, where the Association maintains Limited Common Elements with the cost to be shared only by those Units to which the Limited Common Elements are appurtenant, the budget or a schedule attached thereto shall show the amounts budgeted therefor. In addition, if the Association maintains Limited Common Elements with the cost to be shared only by those entitled to use the Limited Common Elements, the budget or a schedule attached thereto shall show amounts budgeted therefor. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance (to the extent required by law). These accounts shall include, but not be limited to, roof replacement, building painting and pavement re-surfacing regardless of the amount of deferred maintenance expense or replacement cost, and for any other item having an estimated useful life in excess of one (1) year and for which the deferred maintenance expense or replacement cost exceeds \$10,000.00. The amount of reserves shall be computed by means of a formula which is based upon the estimated life and the estimated replacement cost of each reserve item. The Association may adjust replacement and reserve assessments annually to take into account any extension of the useful life of a reserve item caused by deferred maintenance. Reserves shall not be required if the Members of the Association have, by a majority vote at a duly called meeting of Members, determined for a specific fiscal year to provide no reserves or reserves less adequate than required hereby for the Condominium. Prior to transfer of control of the Association to Unit Owners other than the Developer, the Developer may vote to waive reserves for the first two (2) years of operation of the Association, after which time reserves may only be waived or reduced upon the vote of a majority of non-Developer voting interests present at a duly called meeting of the Association. If a meeting of Unit Owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves, as included in the budget, shall go into effect. Reserve funds and any interest accruing thereon shall remain in the reserve account for authorized reserve expenditures, unless their use for any other purposes is approved in advance by a vote of the majority of the voting interests present at a duly called meeting of the Association.

The adoption of a budget for the Condominium shall comply with the requirements hereinafter set forth:

- (i) Notice of Meeting. A copy of the proposed budget of Common Expenses shall be mailed to each Unit Owner not less than fourteen (14) days prior to the meeting of the Board of Directors at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. Notice of the meeting shall also be posted as required herein.

- (ii) Special Membership Meeting. If a budget is adopted by the Board of Directors which requires Assessments against such Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application of ten percent (10%) of the Unit Owners, received within twenty one (21) days of the adoption of the budget, a special meeting of the Unit Owners shall be held within thirty (30) days of delivery of such application to the Board of Directors. Each Unit Owner shall be given at least fourteen (14) days' notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a substitute budget. The adoption of said substitute budget shall require a vote of Owners of not less than a majority of all the Units (including Units owned by the Developer). If a meeting of the Unit Owners has been called as aforesaid and a quorum is not obtained or a substitute budget has not been adopted by the Unit Owners, the budget adopted by the Board of Directors shall go into effect as scheduled.

- (iii) Determination of Budget Amount. In determining whether a budget requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of Assessments for the preceding year, there shall be excluded from the computations any authorized provisions for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium Property or in respect of anticipated expenses of the Association which are not anticipated to be incurred on a regular or annual basis, and there shall be excluded further from such computation Assessments for improvements to the Condominium Property.

- (iv) Proviso. As long as the Developer is in control of the Board of Directors of the Association, the Board shall not impose Assessments for a year greater than one hundred

fifteen percent (115%) of the prior year's Assessments, as calculated per (iii) above, without the approval of a majority of Unit Owners other than the Developer.

- (b) Adoption by Membership. In the event that the Board of Directors shall be unable to adopt a budget for a fiscal year in accordance with the requirements above, the Board of Directors may call a special meeting of Unit Owners for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such special meetings in said subsection, or propose a budget in writing to the Members, and if such budget is adopted by the Members, upon ratification by a majority of the Board of Directors, it shall become the budget for such year.
- (c) Multiple Condominiums. In the event that the Association operates more than one Condominium, then the Association shall adopt a budget for (i) the general administrative expenses of the Association and Common Expenses applicable to all Condominiums and (ii) a budget for the operation, maintenance, repair and replacement of each Condominium. The provisions of these By-Laws providing for any Unit Owner vote on budgets (i.e., in the case of significant increases or as to waiving reserves) shall apply to all Unit Owners as to a budget adopted per clause (i), above, but only those Unit Owners in a particular Condominium as to its budget adopted per clause (ii), above.

10.2 Assessments. Assessments against Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually at least twenty (20) days preceding the year for which the Assessments are made. Such Assessments shall be due in equal installments, payable in advance on the first day of each month of the year for which the Assessments are made. If annual Assessments are not made as required, Assessments shall be presumed to have been made in the amount of the last prior Assessments, and monthly installments on such Assessments shall be due upon each installment payment date until changed by amended Assessments. However, no prior waiver of reserves may be carried forward (i.e., a prior waiver will not remain in effect but, rather, a new vote could be required).

In the event the annual Assessments prove to be insufficient, the budget and Assessments may be amended at any time by the Board of Directors, subject to the provisions of Section 4.3 hereof, if applicable. Unpaid Assessments for the remaining portion of the fiscal year for which amended Assessments are made shall be payable in as many equal installments as there are full months of the fiscal year left as of the date of

such amended Assessments, each such monthly installment to be paid on the first day of the month, commencing the first day of the next ensuing month. If only a partial month remains, the amended Assessments shall be paid with the next regular installment in the following year, unless otherwise directed by the Board in its resolution.

10.3 Special Assessments. Special assessments shall be levied as provided in the Declaration and shall be paid in such manner as the Board of Directors of the Association may require in the notice of such Assessments. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in the notice of adoption of same. However, upon completion of such specific purpose or purposes, any excess funds will be considered Common Surplus, and may, at the discretion of the Board, either be returned to the Unit Owners or applied as a credit towards future assessments. Special Assessments may be levied on fewer than all Condominiums operated by the Association when intended to be used for Common Expenses related solely to that Condominium(s).

10.4 Depository; Commingling. The depository of the Association shall be such bank or banks in the State of Florida as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors.

All funds shall be maintained separately in the Association's name. Reserve and operating funds of the Association may be commingled for purposes of investment, but separate ledgers must be maintained for each account. In no event shall the Association, or any manager or management company representing same, commingle any Association funds with such party's funds or the funds of any other condominium association. Notwithstanding the foregoing, in the event that any amendment to the Act is more liberal than the foregoing, then such amendment to the Act shall supersede and control so as to prevent the commingling of funds to the maximum extent lawful.

10.5 Acceleration of Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon his Assessments, the Board of Directors or its agent may accelerate the Assessments for the remainder of the budget year upon thirty (30) days' prior written notice to the Unit Owner and the filing of a claim of lien, and the then unpaid balance of the Assessments for the balance of the year shall be due upon the date of the filing of the claim of lien.

10.6 Fidelity Bonds. Fidelity bonds shall be required by the Board of Directors for all persons handling or responsible for Association funds in such amounts as shall be determined by a majority of the Board, but in no event less than the amounts required by the Act. The premiums on such bonds shall be paid by the Association as a Common Expense.

10.7 Accounting Records and Reports. The Association shall maintain accounting records in the State, according to accounting practices normally used by similar associations. The records shall be open to inspection by Unit Owners or their authorized representatives at reasonable times and written summaries of them shall be supplied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Unit designating the name and current mailing address of the Unit Owner, the amount of Assessments, the dates and amounts in which the Assessments come due, the amount paid upon the account and the dates so paid, and the balance due. Written summaries of the records described in clause (a) above, in the form and manner specified below, shall be supplied to each Unit Owner annually.

Within one hundred twenty (120) days following the end of the fiscal year, or as otherwise provided in the Act, the Board shall mail, or furnish by personal delivery, to each Unit Owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report shall show the amount of receipts by accounts and receipt classifications and shall show the amount of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (a) Costs for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Costs for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses; and

- (j) General reserves, maintenance reserves and depreciation reserves.
- 10.8 Application of Payment. All payments made by a Unit Owner shall be applied as provided in these By-Laws and in the Declaration or as otherwise determined by the Board.
- 10.9 Notice of Meetings. Notice of any meeting where Assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such Assessments.
11. Roster of Unit Owners. Each Unit Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely upon the accuracy of such information for all purposes until notified in writing of changes therein as provided above. Only Unit Owners of record on the date notice of any meeting requiring their vote is given shall be entitled to notice of and to vote at such meeting, unless prior to such meeting other Owners shall produce adequate evidence, as provided above, of their interest and shall waive in writing notice of such meeting.
12. Parliamentary Rules. Except when specifically or impliedly waived by the chairman of a meeting (either of Members or Directors), Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Act, the Declaration, the Articles or these By-Laws; provided, however, that a strict or technical reading of said Robert's Rules shall not be made so as to frustrate the will of the persons properly participating in said meeting.
13. Amendments. Except as may be provided in the Declaration to the contrary, these By-Laws may be amended in the following manner:
- 13.1 Notice. The full text of a proposed amendment (with added words underlined and deleted words struck through with hyphens, unless dispensed with as provided in the Act) shall be included in the notice of a meeting at which a proposed amendment is to be considered.
 - 13.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the Members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be:

- (a) by not less than a majority of the votes of all Members of the Association represented at a meeting at which a quorum has been attained and by not less than 66-2/3% of the entire Board of Directors; or
 - (b) after control of the Association has been turned over to Unit Owners other than the Developer, by not less than 66-2/3% of the votes of the Members of the Association represented at a meeting at which a quorum has been attained.
- 13.3 Proviso. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer or mortgagees of Units without the consent of said Developer and mortgagees in each instance. No amendment shall be made that is in conflict with the Articles or Declaration. No amendment to this Section shall be valid.
- 13.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment of these By-Laws, which certificate shall be executed by the President or Vice-President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Developer alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Developer. The amendment shall be effective when the certificate and a copy of the amendment is recorded in the Public Records of the County with an identification on the first page of the amendment of the Official Records Book and Page of said Public Records where the Declaration is recorded.
- 14. Rules and Regulations. Attached hereto as Schedule A and made a part hereof are initial rules and regulations concerning the use of portions of the Condominium Property. The Board of Directors may, from time to time, modify, amend or add to such rules and regulations, except that subsequent to the date control of the Board is turned over by the Developer to Unit Owners other than the Developer.
- 15. Official Records. From the inception of the Association, the Association shall maintain for the condominium, a copy of each of the following, where applicable, which shall constitute the official records of the Association:
 - (a) The plans, permits, warranties, and other items provided by the Developer pursuant to Section 718.301(4) of the Act;
 - (b) A photocopy of the recorded Declaration of Condominium and all amendments thereto;

- (c) A photocopy of the recorded By-Laws of the Association and all amendments thereto;
- (d) A certified copy of the Articles of Incorporation of the Association and all amendments thereto;
- (e) A copy of the current Rules and Regulations of the Association;
- (f) A book or books containing the minutes of all meetings of the Association, of the Board of Directors, and of Unit Owners, which minutes shall be retained for a period of not less than 7 years.
- (g) A current roster of all Unit Owners, their mailing addresses, Unit identifications, voting certifications, and if known, telephone numbers;
- (h) All current insurance policies of the Association and of all Condominiums operated by the Association;
- (i) A current copy of any management agreement, lease, or other contract to which the Association is a party or under which the Association or the Unit Owners have an obligation or responsibility;
- (j) Bills of Sale or transfer for any property owned by the Association;
- (k) Accounting records for the Association and the accounting records for the Condominium, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but not be limited to:
 - (i) Accurate, itemized, and detailed records for all receipts and expenditures.
 - (ii) A current account and a monthly, bimonthly, or quarterly statement of the account for each Unit designating the name of the Unit Owner, the due date and amount of each Assessment, the amount paid upon the account, and the balance due.
 - (iii) All audits, reviews, accounting statements, and financial reports of the Association or each Condominium.
 - (iv) All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year;

- (l) Ballots, sign-in sheets, voting proxies and all other papers relating to voting by Unit Owners which shall be maintained for a period of 1 year from the date of the election, vote or meeting to which the document relates.
- (m) All rental records where the Association is acting as agent for the rental of Units.

The official records of the Association shall be maintained within the State of Florida.

The official records of the Association shall be open to inspection by any Association member or the authorized representative of such member at all reasonable times and within five (5) working days after receipt of written request for same by the Board or its designee. The right to inspect the records includes the right to make or obtain copies, at a reasonable expense, if any, of the Association member. The Association may adopt reasonable rules regarding the frequency, time, location, notice and manner of record inspections and copying. The failure of the Association to provide official records to a Unit Owner or his authorized representative within ten (10) working days after receipt of a written request therefor shall create a rebuttable presumption that the Association willfully failed to comply with this paragraph. Failure to permit inspection of the Association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorneys' fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The Association shall maintain on the Condominium Property an adequate number of copies of the Declaration, Articles, By-Laws and rules, and all amendments to the foregoing to ensure their availability to Unit Owners and prospective purchasers. The Association may charge its actual costs for preparing and furnishing these documents to those persons requesting same.

Notwithstanding any of the foregoing, no item exempted from the records availability requirements of the Act (e.g., documents subject to attorney-client privilege) need be made available by the Association.

- 16. Certificate of Compliance. A certificate of compliance from a licensed electrical contractor or electrician may be accepted by the Association's Board as evidence of compliance of the Units to applicable fire and life safety code.
- 17. Construction. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all genders.
- 18. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these By-Laws or the intent of any provision hereof.

The foregoing was adopted as the By-Laws of **MARSH ISLAND YACHT CLUB CONDOMINIUM ASSOCIATION, INC.**, a corporation not for profit under the laws of the State of Florida, as of the 17th day of June, 2011.

Approved:



John Von Hagen, President

SCHEDULE "A"

MARSH ISLAND MARINA ASSOCIATION RULES AND REGULATIONS

Marsh Island Marina Association Rules and Regulations are to protect the rights and interests of Marsh Island residents, Marsh Island Yacht Club members and Marina slip owners. When any vessel enters upon Marina property, its owner, agents, family and guests must comply with all of these Rules and Regulations. If you have any questions regarding use of a vessel slip or any of the facilities at Marsh Island Yacht Club, please contact the Dockmaster.

1. Owners, crew and guests shall request Marina services only from the Dockmaster.
2. All complaints, criticisms or suggestions of any kind relating to operation of the Marina must be in writing, signed and addressed to the Dockmaster.
3. It is the Owner's or Captain's responsibility to ensure orderly conduct by their guests and crew, so that no injury, damage or annoyance is caused to any person or property in the marina.
4. Owners shall be solely responsible for any loss or damage to their private property used or stored in the marina.
5. Owners must comply with all governmental regulations, including the conditions imposed by the Saint Indian River Water Management District Permit.
6. All vessels desiring to dock in the marina must register with the Dockmaster.
7. The sidewalks, docks, finger piers and like portions of the marina shall not be obstructed at any time nor used for any purpose inconsistent with the provisions of the Declaration or these Rules and Regulations. Hoses and electrical lines shall not cross piers or walkways. All hoses must have shut-off nozzles. Carts, tables, maritime equipment and any other objects shall not be stored anywhere in the marina, except in Vessels or enclosed in dock boxes approved by the Marsh Island Marina Association, Inc. (the "Association").
8. Each vessel slip shall be used only for the mooring of private leisure craft in seaworthy condition and capable of operating under its own power. The navigation laws of the United States, the State of Florida and all posted signs apply to all vessels in or approaching the marina.
9. Vessels operated at night shall be properly equipped and navigational lights and shall be operated in accordance with all applicable provisions of federal and state maritime operating procedures.
10. Each Owner is solely responsible for the proper mooring of his vessel and is required to maintain mooring lines in good condition and sufficiently strong to secure the vessel at all times. Any special mooring rules or procedures issued by the Association (for example during a storm warning) shall be complied with at all times.

11. During hurricanes and other high velocity wind threats Owners are responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency. Owners are required to keep on file with the Dockmaster emergency phone numbers and contacts. If an Owner's vessel sinks, the Owner must remove the sunken vessel from the marina immediately. If the Owner does not remove the vessel within twenty-four (24) hours after the sinking, the Association may remove the vessel at the Owner's expense.
12. Owners with sailboats are required to tie off halyards. If this is not done and the slapping of halyards occurs, the Dockmaster shall be authorized to tie off halyards and fine the Owner at the rate established by the Association's Board of Directors from time to time.
13. Vessel slips may not be used for commercial activities, except as otherwise specifically provided in Rules and Regulations.
14. No pets, other than dogs and cats, shall be permitted in or about the marina or Clubhouse. All pets brought into the marina shall be under the close supervision of a responsible adult and attended to at all times. Pet owners are responsible for cleaning up after their pets. The Board of Directors shall have the right, in its sole and absolute discretion, to order the removal of any pet which disturbs, annoys, intimidates or otherwise causes a nuisance. In such event, the Board of Directors shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Marina.
15. No open fires shall be permitted on any Vessel, Unit or any Common Elements, except in any areas, if any, which may be approved for such use by the Board of Directors, and no charcoal, starting fluids or similarly used substances shall be kept in any portion of the marina.
16. Laundry may not be hung out or displayed on any vessel or on any Common Elements.
17. No recreational swimming shall be permitted within the waters of the marina.
18. No signs, advertisements or notices of any kind shall be displayed on any vessel or on any of the Common Elements except as permitted by the Declaration.
19. Garbage, refuse, trash and rubbish shall be deposited in trash receptacles provided by the Association. Oil, spirits, and inflammables are not permitted in refuse containers. Owners shall contact the Dockmaster for the proper method of disposing of waste oil lubricants. Illegal substances, fuel and sewage may not be discharged into marina waters.
20. The handling, storage, transportation and disposal of hazardous or toxic materials is prohibited within the marina; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum products used by an Owner in connection with the operation of his vessel. The Association shall have the right to immediately remove, or cause the immediate removal of, any hazardous or toxic material within the marina.
21. Each Owner is responsible to ensure that any bilge water pumped into the waters of the marina does not contain any petroleum or other hazardous or toxic materials. For purposes of this paragraph, hazardous and toxic materials shall be as defined by federal, Florida and common law.

22. All individuals in or about the marina should take care to not disturb other boaters or homeowners. After 7:00 pm noise must be kept to a minimum.
23. No vessel may be repaired within the marina, except for minor maintenance (as determined by the Dockmaster), which shall be performed between the hours of 9:00 a.m. and 5:00 p.m. and in a manner so as to minimize any disturbance to others.
24. All sub contractors working on vessels in the marina must provide certificate of insurance with 1 million in liability to the dockmaster before any work takes place
25. Tenders and skiffs are allowed, provided they are a normal complement of the vessel's equipment and can be hauled and stored rapidly.
26. Only acceptable pleasure vessels, in good condition and under their own power, shall be permitted in the marina at any time. The Association shall have the right to inspect any vessel in the marina to determine its seaworthiness, cleanliness and compliance with all applicable city, county, state and federal fire, safety and other regulations, as well as to determine whether the vessel fits within the vessel slip. The Association may remove at the owner's expense any vessel from the marina which fails to comply with any of these regulations or fails to fit within the vessel slip.
27. All vessels moored in the marina must be fully equipped and operable for the operation on the sea, be equipped with all safety equipment required by U.S. Coast Guard Regulations and federal, state and local laws, and comply with all licensing and registration requirements.
28. All vessels must be equipped with fully operational sanitary equipment as required by all applicable federal, state and local authorities. **HOLDING TANKS MUST BE USED FOR DISCHARGE OF ALL HEADS ABOARD THE VESSEL. FEDERAL REGULATIONS PROHIBIT DISCHARGING OF VESSELS' SANITARY FACILITIES WITHIN THE MARINA OR SURROUNDING WATERS, THE DOCKMASTER IS AUTHORIZED TO BOARD VESSEL TO INSPECT HOLDING TANKS AND TO TEST THEIR OPERATION WITH DYE IF NECESSARY. NO PERSON SHALL DISCHARGE INTO THE MARINA WATERS OR DISPOSE INTO GARBAGE CONTAINERS ANY OIL, SPIRITS, OILY BILGE WATER, STORAGE BATTERIES, OR COOLANTS. THEY ARE THE RESPONSIBILITY OF THE OWNER OF THE VESSEL TO BE REMOVED FROM THE MARINA AND DISPOSED OF PER STATE AND FEDERAL REGULATIONS.**
29. Each vessel must fit within the boundaries of its Unit, including all bowsprits, booms, pulpits and other projections and overhangs.
30. From time to time, the Association may require that all vessels be removed for maintenance, repairs and dredging.
31. No live-aboards shall be permitted within the marina facility. A live-aboard is defined as a vessel docked at the facility which is inhabited by a person or persons for any five consecutive days or a total of seven days within any 30-day period. The only people who may stay on a boat overnight are slip owners and long term slip renters, their families, their boat captains and their guests if accompanied by the slip owner or slip renter. Notwithstanding the above, in no event may the time limits listed in this paragraph be exceeded. Furthermore these

privileges may be denied to persons who create a nuisance or disturbance to other slip owners and/or property owners.

32. Fueling of vessels in the marina facility is prohibited. No fuel trucks or refueling of any kind will be allowed in or around the marina.
33. The Association reserves the right to rent out slips and otherwise use slips when vacant. For slips that have been vacant for more than 30 days, the owner must notify the Dockmaster in advance of his desire to use his slip. The Association reserves the right to make a different slip available to the owner for a reasonable period of time until the vessel occupying the slip can be relocated.
34. All vessels docked at the marina must have Liability Insurance covering the Vessel and protecting the owner and the Marina against all claims, demands, suits and judgments in a policy amount of not less than \$300,000.
35. Kayaks, canoes, jet skis and other smaller watercraft may only be stored in areas designated specifically for them. The storage and use of such watercraft must comply with the Rules and Regulations determined for them from time to time by the Association.
36. The Marsh Island Homeowners Association has the right to limit and govern parking spaces for marina use. Vehicles must park only in designated parking areas. Vehicles parked in violation of parking rules, may be towed at the owner's expense.
37. Violation of any of these rules or conduct in a manner which is contrary to the best interests of Marsh Island residents and/or slip owners will subject the person in violation to disciplinary action by the Association in accordance with these Rules and Regulations and/or the Association Covenants.
38. No boat lifts or dry storage of vessels is permitted anywhere within the marina or within the Marsh Island development without the express permission of the Marsh Island Homeowners' Association.
39. Slip owners and slip renters are responsible for ensuring that family members, guests and visitors obey all applicable Rules and Regulations of the Marsh Island Homeowners' Association.
40. These Rules and Regulations may be changed at any time by the Board of Directors of the Marsh Island Marina Association. All such changes shall be effective on the date they are posted at the marina office.

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ADDENDUM F: MARINA RULES & REGULATIONS

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



MARSH ISLAND YACHT CLUB CONDOMINIUM ASSOCIATION, INC.
RULES AND REGULATIONS

Marsh Island Marina Association Rules and Regulations are to protect the rights and interests of Marsh Island residents, Marsh Island Yacht Club members and Marina slip owners. When any vessel enters upon Marina property, its owner, agents, family and guests must comply with all of these Rules and Regulations. These Rules and Regulations likewise apply to Marina slip owners, even if they do not keep a vessel in their slip. If you have any questions regarding use of a vessel slip or any of the facilities at Marsh Island Yacht Club, please contact the Dockmaster.

1. Vessel owners, crew and guests shall request Marina services only from the Dockmaster.
2. All complaints, criticisms or suggestions of any kind relating to operation of the Marina must be in writing, signed and addressed to the Dockmaster.
3. It is the Owner's or Captain's responsibility to ensure orderly conduct by their guests and crew, so that no injury, damage or annoyance is caused to any person or property in the marina.
4. Owners shall be solely responsible for any loss or damage to their private property used or stored in the marina.
5. Owners must comply with all governmental regulations, including conditions imposed by St. Johns River Water Management District and all other governmental entities that have jurisdiction over the marina and vessels docked within the marina.
6. Owners or operators of vessels desiring to dock in the marina must register in advance with the Dockmaster.
7. The sidewalks, docks, finger piers and like portions of the marina shall not be obstructed at any time nor used for any purpose inconsistent with the provisions of the Declaration or these Rules and Regulations. Hoses and electrical lines shall not cross piers or walkways. All hoses must have shut-off nozzles. Carts, tables, maritime equipment and any other objects shall not be stored anywhere in the marina, except in Vessels or enclosed in dock boxes approved by the Marsh Island Marina Association, Inc. (the "Association").
8. Each vessel slip shall be used only for the mooring of private leisure craft in seaworthy condition and capable of operating under its own power. The navigation laws of the United States, the State of Florida and all posted signs apply to all vessels in or approaching the marina.
9. Vessels operated at night shall be properly equipped and navigational lights and shall be operated in accordance with all applicable provisions of federal and state maritime operating procedures.
10. Each Owner is solely responsible for the proper mooring of his vessel and is required to

maintain mooring lines in good condition and sufficiently strong to secure the vessel at all times. Any special mooring rules or procedures issued by the Association (for example during a storm warning) shall be complied with at all times.

11. During hurricanes and other high velocity wind threats Owners are responsible for following all safety precautions that may be issued or recommended by the National Hurricane Center, National Weather Service, U.S. Coast Guard, the Association or any other applicable agency. Owners are required to keep on file with the Dockmaster emergency phone numbers and contacts. If an Owner's vessel sinks, the Owner must remove the sunken vessel from the marina immediately. If the Owner does not remove the vessel within twenty-four (24) hours after the sinking, the Association may remove the vessel at the Owner's expense.
12. Owners with sailboats are required to tie off halyards. If this is not done and the slapping of halyards occurs, the Dockmaster shall be authorized to tie off halyards and fine the Owner at the rate established by the Association's Board of Directors from time to time.
13. Vessel slips may not be used for commercial activities, except as otherwise specifically provided in Rules and Regulations.
14. No pets, other than dogs and cats, shall be permitted in or about the marina or Clubhouse. All pets brought into the marina shall be under the close supervision of a responsible adult and attended to at all times. Pet owners are responsible for cleaning up after their pets. The Board of Directors shall have the right, in its sole and absolute discretion, to order the removal of any pet which disturbs, annoys, intimidates or otherwise causes a nuisance. In such event, the Board of Directors shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Marina.
15. No open fires shall be permitted on any Vessel, Unit or any Common Elements, except in any areas, if any, which may be approved for such use by the Board of Directors, and no charcoal, starting fluids or similarly used substances shall be kept in any portion of the marina.
16. Laundry may not be hung out or displayed on any vessel or on any Common Elements.
17. No recreational swimming shall be permitted within the waters of the marina.
18. No signs, advertisements or notices of any kind shall be displayed on any vessel or on any of the Common Elements except as permitted by the Declaration.
19. Garbage, refuse, trash and rubbish shall be deposited in trash receptacles provided by the Association. Oil, spirits, and inflammables are not permitted in refuse containers. Owners shall contact the Dockmaster for the proper method of disposing of waste oil lubricants. Illegal substances, fuel and sewage may not be discharged into marina waters.
20. The handling, storage, transportation and disposal of hazardous or toxic materials is

prohibited within the marina; provided, however, that this shall not prohibit the proper handling, storage and transportation of petroleum products used by an Owner in connection with the operation of his vessel. The Association shall have the right to immediately remove, or cause the immediate removal of, any hazardous or toxic material within the marina.

21. Each Owner is responsible to ensure that any bilge water pumped into the waters of the marina does not contain any petroleum or other hazardous or toxic materials. For purposes of this paragraph, hazardous and toxic materials shall be as defined by federal, Florida and common law.
22. All individuals in or about the marina should take care to not disturb other boaters or homeowners. Between 7:00 pm and 8:00 am noise must be kept to a minimum.
23. No vessel may be repaired within the marina, except for minor maintenance (as determined by the Dockmaster), which shall be performed between the hours of 9:00 a.m. and 5:00 p.m. and in a manner so as to minimize any disturbance to others.
24. All sub-contractors working on vessels in the marina must provide certificate of insurance with 1 million in liability to the dockmaster before any work takes place
25. Tenders and skiffs are allowed, provided they are a normal complement of the vessel's equipment and can be hauled and stored rapidly.
26. Only acceptable pleasure vessels, in good condition and under their own power, shall be permitted in the marina at any time. The Association shall have the right to inspect any vessel in the marina to determine its seaworthiness, cleanliness and compliance with all applicable city, county, state and federal fire, safety and other regulations, as well as to determine whether the vessel fits within the vessel slip. The Association may remove at the owner's expense any vessel from the marina which fails to comply with any of these regulations or fails to fit within the vessel slip.
27. All vessels moored in the marina must be fully equipped and operable for the operation on the sea, be equipped with all safety equipment required by U.S. Coast Guard Regulations and federal, state and local laws, and comply with all licensing and registration requirements.
28. All vessels must be equipped with fully operational sanitary equipment as required by all applicable federal, state and local authorities. **HOLDING TANKS MUST BE USED FOR DISCHARGE OF ALL HEADS ABOARD THE VESSEL. FEDERAL REGULATIONS PROHIBIT DISCHARGING OF VESSELS' SANITARY FACILITIES WITHIN THE MARINA OR SURROUNDING WATERS, THE DOCKMASTER IS AUTHORIZED TO BOARD VESSEL TO INSPECT HOLDING TANKS AND TO TEST THEIR OPERATION WITH DYE IF NECESSARY. NO PERSON SHALL DISCHARGE INTO THE MARINA WATERS OR DISPOSE INTO GARBAGE CONTAINERS ANY OIL, SPIRITS, OILY BILGE WATER, STORAGE BATTERIES, OR COOLANTS. THEY**

ARE THE RESPONSIBILITY OF THE OWNER OF THE VESSEL TO BE REMOVED FROM THE MARINA AND DISPOSED OF PER STATE AND FEDERAL REGULATIONS.

29. Each vessel must fit within the boundaries of its Unit, including all bowsprits, booms, pulpits and other projections and overhangs, unless specifically approved by the dockmaster and only if it does not interfere with the maneuvering of other boats in the marina.
30. From time to time, the Association may require that all vessels be removed for maintenance, repairs and dredging.
31. No live-aboards shall be permitted within the marina facility. A live-aboard is defined as a vessel docked at the facility which is inhabited by a person or persons for any five consecutive days or a total of seven days within any 30-day period. The only people who may stay on a boat overnight are slip owners and long-term slip renters, their families, their boat captains and their guests if accompanied by the slip owner or slip renter. Notwithstanding the above, in no event may the time limits listed in this paragraph be exceeded. Furthermore, these privileges may be denied to persons who create a nuisance or disturbance to other slip owners and/or property owners.
32. Fueling of vessels in the marina facility is permitted subject to the following requirements:
 - a) Only fuel vendors expressly approved by the dockmaster may deliver fuel.
 - b) The fuel vender must have proper liability insurance that lists Marsh Island Yacht Club as additionally insured in an amount not less than one million dollars.
 - c) All such vendors must have fuel spillage containment equipment available which complies with Coast Guard regulations in the event of any fuel contamination or spillage.
 - d) Refueling must be conducted during normal business hours and the Dockmaster must be present during the entire refueling process.
33. The Association reserves the right to rent out slips and otherwise use slips when vacant. For slips that have been vacant for more than 30 days, the owner must notify the Dockmaster in advance of his desire to use his slip. The Association reserves the right to make a different slip available to the owner for a reasonable period of time until the vessel occupying the slip can be relocated.
34. Slip owners may rent their slips to owners of vessels which meet all of the Yacht Club requirements and Rules and Regulations. For a slip owner to rent his/her slip the slip owner must first notify the dockmaster of his/her intention to rent the slip and the dockmaster will provide to the slip owner Rules and Regulations pertaining to slip rentals and a copy of the rental agreement which must be executed between the slip owner and the renter and approved by the dockmaster.

35. All vessels docked at the marina must have Liability Insurance covering the Vessel and protecting the owner and the Marina against all claims, demands, suits and judgments in a policy amount of not less than \$1,000,000.
36. Kayaks, canoes, jet skis and other smaller watercraft may only be stored in areas designated specifically for them. The storage and use of such watercraft must comply with the Rules and Regulations determined for them from time to time by the Association.
37. The Marsh Island Homeowners Association has the right to limit and govern parking spaces for marina use. Vehicles must park only in designated parking areas. Vehicles parked in violation of parking rules, may be towed at the owner's expense.
38. Violation of any of these rules or conduct in a manner which is contrary to the best interests of Marsh Island residents and/or slip owners will subject the person in violation to disciplinary action by the Association in accordance with these Rules and Regulations and/or the Association Covenants.
39. No boat lifts or dry storage of vessels is permitted anywhere within the marina or within the Marsh Island development without the express permission of the Marsh Island Yacht Club Condominium Association Board of Directors.
40. Slip owners and slip renters are responsible for ensuring that family members, guests and visitors obey all applicable Rules and Regulations of the Marsh Island Homeowners' Association.
41. These Rules and Regulations may be changed at any time by the Board of Directors of the Marsh Island Yacht Club Condominium Association. All such changes shall be effective on the date they are posted at the marina office.

ADDENDUM G: 2018 BUDGET

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



Marsh Island HOA 2018 Proposed Budget

Account Description	YTD Actual 9/30/2017	YTD Budget 9/30/2017	Variance	Annual 2017 Budget	2016 Actual	Projected 2017 Actual	2018 Budget
INCOME:							
06310 Maintenance Assessment Inco	129,600.00	129,600.00	0.00	172,800.00	172,800.00	172,800.00	190,080.00
06311 Reserve Funding	(12,776.31)	(12,776.22)	(0.09)	(17,035.00)	(17,035.00)	(17,035.08)	(17,035.08)
06340 Late Fee Income	2,309.60	1,720.53	589.07	2,294.01	2,231.00	3,079.47	3,000.00
06350 Legal Fees Reimbursement	0.00	720.99	(720.99)	961.33		0.00	0.00
06365 Lot Mowing	8,880.00	8,640.00	240.00	11,520.00	11,700.00	11,840.00	12,000.00
06465 Excess Funds	10,582.20	10,582.20	0.00	14,109.60		14,109.60	7,255.16
06505 Clubhouse Fee	100.00	0.00	100.00	0.00	850.00	400.00	400.00
06550 Common Area Contribution fm MIYCCA	900.00	849.96	50.04	1,133.33	1,200.00	1,200.00	1,200.00
06620 Application Fees	100.00	900.00	(800.00)	1,200.00	300.00	133.33	150.00
06920 Misc. Income	1,114.00	199.98	914.02	266.67	11,448.00	1,485.33	1,500.00
Total Income Less (reserves)	140,809.49	140,437.44	372.05	187,249.94	183,494.00	188,012.65	198,550.08
EXPENSES							
General & Administrative:							
07100 Management Fees	10,199.97	10,199.97	0.00	13,599.96	13,600.00	13,599.96	14,000.00
07150 Legal Fees	1,145.03	2,250.00	1,104.97	3,000.00	1,893.00	1,526.71	2,000.00
07200 Accounting Fees	2,400.00	2,400.00	0.00	2,400.00	2,400.00	3,200.00	3,200.00
07250 Insurance	14,045.01	14,249.97	204.96	19,000.00	18,742.00	18,726.68	19,000.00
Miscellaneous					(2,344.00)		
07400 Administration Expenses	560.75	749.97	189.22	1,000.00	1,133.00	747.67	1,000.00
Total General & Administrati	28,350.76	29,849.91	1,499.15	38,999.96	35,424.00	37,801.01	39,200.00
Building Expenses:							
07650 Maintenance Labor	1,430.13	1,874.97	444.84	2,500.00	2,956.00	1,906.84	2,000.00
08515 Clubhouse Cleaning	99.48	1,125.00	1,025.52	1,500.00	1,058.00	132.64	200.00
07700 Building Maintenance	11,641.84	3,750.03	(7,891.81)	5,000.00	16,238.00	15,522.45	16,000.00
08510 Clubhouse Repairs	0.00	1,500.03	1,500.03	2,000.00	3,183.00	0.00	2,000.00
Clubhouse Roof Maintenance	0.00					0.00	0.00
07750 Contractor Repair Service	4,098.11	2,250.00	(1,848.11)	3,000.00	6,718.00	5,464.15	6,000.00
08512 Clubhouse Furnishings	100.00	1,500.03	1,400.03	2,000.00	6,859.00	133.33	500.00
08535 A/C Maint contract/Repair	42.00	1,500.03	1,458.03	2,000.00	495.00	56.00	500.00
08530 Clubhouse Plant Service	0.00	1,125.00	1,125.00	1,500.00	880.00	500.00	800.00
08620 Clubhouse Pest Control-Rodent	875.00	375.03	(499.97)	500.00	450.00	1,166.67	1,000.00
07950 Termite Warranty	415.00	450.00	35.00	600.00	415.00	553.33	600.00
Total Building Expense	18,701.56	15,450.12	(3,251.44)	20,600.00	39,252.00	25,435.41	29,600.00
Communications and Security							
08350 Access Control & Maint. Security	631.92	749.97	118.05	1,000.00	1,161.00	842.56	1,000.00
08420 Fire Equipment Maint	1,347.27	375.03	(972.24)	500.00	0.00	1,796.36	500.00
08450 Telephone	821.22	900.00	78.78	1,200.00	636.00	1,094.96	1,200.00
08520 Internet Service - Clubhouse	559.60	412.47	(147.13)	550.00	788.00	746.13	800.00
Total Communications and Security	3,360.01	2,437.47	(922.54)	3,250.00	2,585.00	4,480.01	3,500.00
Utilities:							
08650 Trash Removal	1,899.85	1,874.97	(24.88)	2,500.00	2,660.00	2,533.13	2,700.00
08660 Electric Common	2,648.36	3,150.00	501.64	4,200.00	3,524.00	3,531.15	3,600.00
08750 Water & Sewer	1,661.82	1,649.97	(11.85)	2,200.00	2,961.00	2,215.76	2,300.00
08780 Gas-related expenses	0.00	450.00	450.00	600.00	728.00	0.00	500.00
Total Utilities	6,210.03	7,124.94	914.91	9,500.00	9,873.00	8,280.04	9,100.00
Landscape Expenses:							
08810 Annuals	0.00	1,125.00	1,125.00	1,500.00	1,255.00	0.00	1,500.00
08850 Landscape Maint. & Pest Control Fert.	30,620.00	25,499.97	(5,120.03)	34,000.00	29,245.00	40,826.67	35,000.00
08875 Entryway Landscape Maintenance	3,540.00	1,500.03	(2,039.97)	2,000.00	8,160.00	4,720.00	5,000.00
08900 Mulch Replacement	0.00	1,125.00	1,125.00	1,500.00	270.00	0.00	500.00
08925 Tree & Shrub Maintenance	1,146.00	1,125.00	(21.00)	1,500.00	2,246.00	1,528.00	1,500.00
08930 Oak/ Palm Trimming/Shrub Mai	726.00	2,625.03	1,899.03	3,500.00	7,692.00	968.00	1,000.00

09000 Shrub & Tree Replacement	220.00	2,999.97	2,779.97	4,000.00	2,065.00	293.33	2,000.00
09100 Irrigation Maintenance	8,258.92	6,750.00	(1,508.92)	9,000.00	10,097.00	11,011.89	10,000.00
09110 Irrigation Supplies	1,151.69	1,500.03	348.34	2,000.00	4,334.00	1,535.59	2,000.00
09150 Lake Maintenance	520.00	749.97	229.97	1,000.00	585.00	693.33	700.00
09175 Mangrove Trimming	12,325.00	16,499.97	4,174.97	22,000.00	11,550.00	12,000.00	12,000.00
09180 Buffer Maintenance	2,700.00	4,050.00	1,350.00	5,400.00	6,365.00	3,600.00	3,600.00
Total Landscape Expense	61,207.61	65,549.97	4,342.36	87,400.00	83,864.00	77,176.81	74,800.00
Dockmaster Services to HOA							
09310 Dock Master Compensation	8,512.56	8,512.47	(0.09)	11,350.00	11,350.00	11,350.08	11,350.08
Total Dockmaster Services	8,512.56	8,512.47	(0.09)	11,350.00	11,350.00	11,350.08	11,350.08
Other Expenses:							
09550 Contingency	7,633.87	6,750.00	(883.87)	4,000.00	2,102.00	10,178.49	6,000.00
09550 Contingency Hurricane Expenses	7,450.71	0.00		5,000.00	25,938.00	9,934.28	
09554 Water Drainage	0.00	562.50	562.50	750.00	0.00	0.00	0.00
09555 Bad Debt	0.00	4,050.00	4,050.00	5,400.00	32,733.00	25,000.00	25,000.00
09580 PR/Marketing Events	0.00	749.97	749.97	1,000.00	0.00	0.00	0.00
Total Other Expenses	15,084.58	12,112.47	4,478.60	16,150.00	60,773.00	45,112.77	31,000.00
TOTAL EXPENSES	141,427.11	141,037.35	7,060.95	187,249.96	243,121.00	209,636.15	198,550.08
NET INCOME/(LOSS)	(617.62)	(599.91)	7,433.00	(0.02)	(59,627.00)	(21,623.49)	0.00

2017 Actual Monthly Assessment: 450

Proposed 2018 Monthly Assessment \$495

ADDENDUM H: TITLE

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



OWNER'S POLICY OF TITLE INSURANCE

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:


1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

(Covered Risks continued)

In Witness Whereof, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory of the Company.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111



By  President

Attest  Secretary

S E R I A L
OF6-8268026

(Covered Risks continued)

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) the term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,

Old Republic National Title Insurance Company

OWNER'S POLICY Schedule A

Policy No.:
OF6-8268026

Date of Policy:
February 20, 2015 @ 01:22 PM

Agent's File Reference:
15422T

Address Reference: 9180 Marsh Island Drive, Vero Beach, FL 32963

1. Name of Insured:
2. The estate or interest in the Land that is insured by this policy is: Fee Simple as shown by instrument recorded in Official Records Book 2824, Page 2250, of the Public Records of Indian River County, Florida.
3. Title is vested in:
4. The Land referred to in this policy is described as follows:

Lot 26, MARSH ISLAND, PD, according to the map or plat thereof as recorded in Plat Book 16, Page(s) 71, Public Records of Indian River County, Florida.

Nothing new through 10/04/2018
2011 taxes p

Old Republic National Title Insurance Company

400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111

Agent No.: 19769

Issuing Agent:

Stewart, Evans, Stewart & Emmons, PA
2911 Cardinal Drive
Vero Beach, FL 32964-3345

re
William J. Stewart
Attorney at Law

Old Republic National Title Insurance Company

OWNER'S POLICY **Schedule B (Continued)**

Policy No.:
OF6-8268026

Agent's File Reference:
15422T

22. The lien of all taxes for the year 2015 and thereafter, which are not yet due and payable.

NOTE: ITEMS 1, 2, 4, 5 AND 6 ARE HEREBY DELETED.

Old Republic National Title Insurance Company

OWNER'S POLICY Schedule B

Policy No.:
OF6-8268026

Agent's File Reference:
15422T

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. General or special taxes and assessments required to be paid in the year 2015 and subsequent years.
2. Rights or claims of parties in possession not recorded in the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey of the Land and inspection of the Land.
4. Easements, or claims of easements, not recorded in the Public Records.
5. Any lien, or right to a lien, for services, labor, or material furnished, imposed by law and not recorded in the Public Records.
6. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the Land(s) insured hereunder, including submerged, filled and artificially exposed lands, and lands accreted to such lands.
7. All matters contained on the Plat of Marsh Island P.D., as recorded in Plat Book 16, Page(s) 71, Public Records of Indian River County, Florida.
8. Covenants, conditions, and restrictions recorded in O.R. Book 1473, Page 1773 and amendments in O.R. Book 1524, Page 1625 and O.R. Book 2125, Page 1212, Public Records of Indian River County, Florida, which contain provisions creating easements, assessments, a right of first refusal and the approval of a prior occupant(s)/purchaser(s).
9. Resolution recorded in O.R. Book 2213, Page 1692, Public Records of Indian River County, Florida.
10. Certificates recorded in O.R. Book 1585, Page 2607 and O.R. Book 2279, Page 666, Public Records of Indian River County, Florida.
11. Marsh Island Homeowners Association, Inc. By-Laws recorded in O.R. Book 1473, Page 1819 and O.R. Book 1473, Page 1829, Public Records of Indian River County, Florida.
12. Conservation easement recorded in O.R. Book 1473, Page 1765 and amended in O.R. Book 1535, Page 1043, Public Records of Indian River County, Florida.
13. Reservations recorded in Deed Book 85, Page 72; O.R. Book 295, Page 333, and O.R. Book 352, Page 274, Public Records of Indian River County, Florida.
14. Notice of Use Limitations recorded in O.R. Book 1601, Page 524, Public Records of Indian River County, Florida.
15. Bill of Sale of utility facilities recorded in O.R. Book 1488, Page 1034, Public Records of Indian River County, Florida.
16. Irrevocable Petition to Annex Real Property recorded in O.R. Book 2491, Page 175, Public Records of Indian River County, Florida. (as to Lot 26)
17. Memorandum of Lease by and between Marsh Island Development Company, L.L.C. and Marsh Island Homeowner's Association, Inc. recorded in O.R. Book 1672, Page 2038, Public Records of Indian River County, Florida.
18. Riparian and littoral rights are not insured.
19. This policy does not insure any portion of the insured parcel lying waterward of the mean-high water line of Indian River and/or its tributaries.
20. Those portions of the property herein described being artificially filled in land in what was formerly navigable waters, are subject to the right of the United States Government arising by reason of the United States Government control over navigable waters in the interest of navigation and commerce.
21. The rights, if any, of the public to use as a public beach or recreation area any part of the land lying between the body of water abutting the subject property and the natural line of vegetation, bluff, extreme high water line, or other apparent boundary lines separating the publicly used area from the upland private area.

- (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
- (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (c) "Insured Claimant": An Insured claiming loss or damage.
 - (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
 - (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
 - (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
 - (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
 - (j) "Title": The estate or interest described in Schedule A.
 - (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- (a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks,

tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) **To Pay or Tender Payment of the Amount of Insurance.**

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) **To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both the Company and the Insured at the time of the controversy or claim. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the Land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator (s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim whether or not based on negligence shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499, Phone: (612) 371-1111.

**Old Republic National
Title Insurance Company**

OWNER'S
TITLE INSURANCE
POLICY



For information about coverage or
assistance in resolving complaints,
call (612) 371-1111.

Offices at
400 Second Avenue South
Minneapolis, Minnesota 55401

 First American Title	Owner's Policy of Title Insurance
	<small>ISSUED BY</small> First American Title Insurance Company
Schedule A	<small>POLICY NUMBER</small> 5011412-827041

Name and Address of Title Insurance Company:

FIRST AMERICAN TITLE INSURANCE COMPANY, 1 First American Way, Santa Ana, California 92707

File No.: E1610039

Address Reference: 9265 Marsh Island Dr. E, Vero Beach, Florida 32963

Date of Policy: December 6, 2016 at 12:33 PM

1. Name of Insured:
2. The estate or interest in the Land that is insured by this policy is: Fee Simple
3. Title is vested in: General Warranty deed executed by _____ to _____ husband and wife dated November 28, 2016, filed December 6, 2016 in Official Records Book 2984, Page 2061, Public Records of Indian River County, Florida, conveying said property described herein.
4. The Land referred to in this policy is described as follows: Lot 30, A PLAT OF MARSH ISLAND, PD, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Indian River County, Florida, recorded in Plat Book 16, Page 71, Public Records of Indian River County, Florida.

Oceanside Title & Escrow, Inc.
3501 Ocean Drive
Vero Beach, Florida 32963

By: _____
Authorized Countersignature
(This Schedule A valid only when Schedule B is attached)

Schedule B**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
2. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the land.
3. Any lien for services, labor, or materials in connection with improvements, repairs or renovations provided before, on, or after Date of Policy, not shown by the public records.
4. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously, under water.
5. Taxes or special assessments not shown as liens in the public records or in the records of the local tax collecting authority, at Date of Policy.
6. Any minerals or mineral rights leased, granted or retained by prior owners.
7. Taxes and assessments for the year 2017 and subsequent years.

NOTE: Exception(s) numbered 1, 3, 5 and 6 above are hereby deleted.

8. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of A PLAT OF MARSH ISLAND, PD, as recorded in Plat Book 16, Page(s) 71, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
9. Declaration of Covenants, Conditions, Restrictions and Easements, which contains provisions for a private charge or assessments, and provides for a right of first refusal or the prior approval of a future purchaser or occupant, recorded in Book 1473, Page 1773, as amended in Book 1524, page 1625 and in Book 2125, Page 1212, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
10. Articles of Incorporation and Bylaws of Marsh Island Homeowners' Association, Inc., recorded in Book 1473, Page 1819 and Book 1473, Page 1829, respectively.
11. Reservations in favor of the Trustees of the Internal Improvement Fund of the State of Florida as set forth in Deed No. 20533 recorded in Deed Book 85, Page 72, as corrected by deeds recorded in Book 295, Page 333 and Book 352, Page 274. Note: The right of entry has been released by Chapter 270.11, Florida Statutes.

12. Conservation Easement in favor of St. Johns River Water Management District recorded in Book 1473, Page 1765.
13. Bill of Sale of Utility Facilities to Indian River County recorded in Book 1488, Page 1034.
14. Memorandum of Lease recorded in Book 1672, Page 2038.
15. Restrictions, covenants, conditions recorded in Book 1495, Page 307.
16. Irrevocable Petition to Annex Real Property in the Town of Orchid, Florida recorded in Book 2491, Page 314.
17. Easement recorded in Book 2513, Page 80 and Book 2525, Page 1621.
18. Covenant Running With The Land recorded in Book 2176, Page 959 , but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
19. Riparian and/or littoral rights are not insured.
20. This Policy does not insure title to any part of the land lying below the ordinary high water mark of any abutting body of water.

Note: All of the recording information contained herein refers to the Public Records of Indian River County, Florida, unless otherwise indicated. Any reference herein to a Book and Page or Instrument Number is a reference to the Official Record Books of said county, unless indicated to the contrary.



OWNER'S POLICY OF TITLE INSURANCE

(with Florida Modifications)

Issued by Westcor Land Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, Westcor Land Title Insurance Company, a California corporation (the "Company") insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

COVERED RISKS CONTINUED ON NEXT PAGE

In Witness Whereof, WESTCOR LAND TITLE INSURANCE COMPANY, has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory of the Company.

ISSUED BY
Premium Title Services, Inc.

Authorized Officer or Licensed Agent



By:

President

Attest:

Secretary

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective

- (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
- (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

- (a) created, suffered, assumed, or agreed to by the Insured Claimant;

- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy; or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

- (a) a fraudulent conveyance or fraudulent transfer; or
- (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized bylaw.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring

the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

- 3. **NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT** The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

CONDITIONS (con't)

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
- (i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this

policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
- (i) the Amount of Insurance; or
- (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
- (i) the Amount of Insurance shall be increased by 10%, and
- (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

CONDITIONS (con't)

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Unless prohibited by applicable law, arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association may be demanded if agreed to by both the Company and the Insured at the time of a controversy or claim. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, and service of the Company in connection with its issuance or the breach of a policy provision or other obligation. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the Land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim whether or not based on negligence shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: 875 Concourse Parkway South, Suite 200, Maitland, FL 32751.

WESTCOR LAND TITLE INSURANCE COMPANY
ALTA 6-17-06 OWNER'S POLICY **th Florida Modifications**

SCHEDULE A

Name and Address of Title Insurance Company: **Westcor Land Title Insurance Company, 875 Concourse Parkway South, Suite 200, Maitland, FL 32751.**

State: Florida

County: Indian River

Address Reference: 9250 East Marsh Island Drive, Vero Beach, FL 32963

File Number:
CEC1603-FL-2932611

Policy Number:
OP-25-GA1000-5032498

Date of Policy:
July 28, 2016 or date
and time of recording,
whichever is later

1 Name of Insured:

Robert Parcels and Susan C. Parcels, Husband and wife, tenants by the entirety

2. The estate or interest in the Land that is insured by this policy is:

FEE SIMPLE

3. Title is vested in:

, Husband and wife, tenants by the entirety

4. The Land referred to in this policy is described as follows:

LOT 15, MARSH ISLAND, PD, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 16, PAGE(S) 71, 71A AND 71B, INCLUSIVE, OF THE PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA.

Issued By:

Premium Title Services, Inc.
1000 Abernathy Road NE, Suite 200
Atlanta, GA 30328



(David Jenkins)

record 10/4/2018

Note: This policy is of no force and effect unless Schedule A and Schedule B are attached together with any added pages incorporated by reference.

WESTCOR LAND TITLE INSURANCE COMPANY
ALTA 6-17-06 OWNER'S POLICY (With Florida Modifications)

SCHEDULE B

File #: CEC1603-FL-2932611

Policy #: OP-25-GA1000-5032498

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. Taxes and assessments for the year 2016 and subsequent years, which are not yet due and payable.
2. Easements, claims of easements, boundary line disputes, overlaps, encroachments or other matters not shown by the public records which would be disclosed by an accurate survey of the land.
3. Rights or claims of parties in possession not shown by the public records.
4. Taxes or assessments which are not shown as existing liens in the public records.
5. Any lien provided by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for service by any water, sewer or gas system supplying the insured land.
6. Any and all easements, set back lines, notes, exceptions, conditions, and other matters as shown and depicted on the Plat of Marsh Island, Pd, recorded in Plat (book) 16 (page) 71.
7. Covenants, Conditions, and Restrictions as set forth in the Declaration for Marsh Island, recorded in (book) 1473 (page) 1773, and amended in OR Book 1524 Page 1625 any amendments thereto, but omitting, except to the extent the said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical conditions, national origin, source of income or ancestry.
8. Covenants, Conditions, and Restrictions as set forth in the Declaration for Marsh Island, recorded in (book) 1473 (page) 1829, and any amendments thereto, but omitting, except to the extent the said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical conditions, national origin, source of income or ancestry.
9. Covenants, Conditions, and Restrictions as set forth in the Declaration for Marsh Island, recorded in (book) 2125 (page) 1212, and any amendments thereto, but omitting, except to the extent the said covenant or restriction is controlled or permitted by any applicable federal or state law, any covenants or restrictions, if any, based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, medical conditions, national origin, source of income or ancestry.
10. (book) 2549 (page) 870.
11. (book) 2781 (page) 2341.
12. The nature and extent, or existence of riparian and or littoral rights, if any, appurtenant to the insured land are neither guaranteed nor insured and the riparian rights of others as to same may affect the said land are hereby excepted.
13. Any loss or damage arising from assessments resulting from the provisions contained in Florida Statute Section 720.3085, notwithstanding assurances to the contrary in any ALTA 5.1 Planned Unit Development endorsement or Florida Form 9 endorsement which may have been issued with this Commitment or Policy.
14. Municipal/Code/Permit violations not properly indexed and/or disclosed by the municipality prior to closing.

ADDENDUM I: NEW BUYER'S PACKET

3 Luxury Waterfront Homesites | Vero Beach, Indian River Co, FL



Marsh Island Homeowners Association, Inc.

c/o A.R. Choice Management, Inc.
100 Vista Royale Blvd., Vero Beach, FL 32962
Phone (772) 567-0808 ~ Fax (772) 567-2551
Abe@archoice.com ~ Pam@archoice.com

Dear Prospective Buyer,

We are very excited that you are considering purchasing a home at Marsh Island and that you have chosen our beautiful community!

Our office is responsible for managing this association. Upon closing we are also responsible for the collection of maintenance assessments, which are due on the 1st day of each month. Once you close, our office will send you an information sheet with payment options.

Your management team is Abe Abramczyk – Manager; Pam Kinney – Administrative Assistant to the Manager; Melanie Killmon – Accountant. Please contact us with any questions or concerns.

At your convenience, we ask that you complete the enclosed **New Buyer Packet** and return it to us so that we are sure to have the correct closing information on file prior to your purchase. After closing, we will require that you complete the Voter's Certificate to indicate the voting representative (only 1 owner can be the Voter) for your unit.

There is a \$75.00 cost associated with these documents (check made payable to AR Choice Management) in providing them to each Realtor/Buyer that makes a request for information. This fee will be added to the estoppel fee/invoice and collected at closing.

If there is any information that you feel is missing from this packet, please contact us, as we aim to provide concise information for all your association needs.

Once we receive the Warranty Deed from the closing agent/title company, we can change our association records to reflect the new ownership information. This will prompt our office to send you a Welcome letter with additional information after closing.

We look forward to meeting you!

Sincerely,

Abe Abramczyk

Abe Abramczyk
Community Association Manager
A.R. Choice Manamgent

Marsh Island Homeowners Association, Inc.

c/o A.R. Choice Management, Inc.

100 Vista Royale Blvd., Vero Beach, FL 32962

Phone (772) 567-0808 ~ Fax (772) 567-2551

Abe@archoice.com ~ Pam@archoice.com

PURCHASE APPROVAL APPLICATION

This application form fully completed must include a copy of the proposed **Sales Contract and \$100.00 made payable to Marsh Island HOA.** The application must be received by the Association at the above address NOT LESS THAN 2 WEEKS (Saturdays, Sundays, Holidays and the date of Receipt Excepted) PRIOR to the date action is desired of the Association. Missing or incomplete information will cause the application to be returned without action.

Application is being made for: (Full Address) _____

NAME AND ADDRESS INFORMATION

Name of person (s) who will be acquiring Title: _____

Name of Spouse: _____

Present home address: _____

Phone number at this address: _____

How long at this address: _____

Business address and phone #: _____

Nearest Relative in case of emergency _____

Phone _____

Relationship _____



INTENDED USE OF UNIT

Are you purchasing this unit for;

(____) Personal Housing (____) Rental to others (____) For Relatives

Please list the names and relationship of those who will regularly occupy the unit:

NAME

RELATIONSHIP

Will the unit be occupied:

_____ Year Round _____ Seasonal _____ Other: _____

PETS

Do you now or do you plan to have pets? _____ Yes _____ No

Breed/Weight: _____ Breed/Weight: _____

The following items must be included with this application:

- Copy of current year Rabies Vaccination
- Current License Tag Number
- Photo of pet

MOTOR VEHICLE INFORMATION

Make/Model/Year of 1st Vehicle: _____

License Plate Number/State: _____

Make/Model/Year of 2nd Vehicle: _____

License Plate Number/State: _____

Marsh Island Homeowners Association, Inc.

c/o A.R. Choice Management, Inc.
100 Vista Royale Blvd., Vero Beach, FL 32962
Phone (772) 567-0808 ~ Fax (772) 567-2551
Abe@archoice.com ~ Pam@archoice.com

APPLICANT ATTESTATION

I HEARBY CERTIFY THAT ALL THE ABOVE INFORMATION IS CORRECT AND I HAVE RECEIVED A COPY OF THE FOLLOWING DOCUMENTS FROM THE SELLER OR THE REAL ESTATE AGENT. I ALSO ATTEST TO ABIDE BY ALL OF THE RULES AND REGULATIONS GOVERNING THIS ASSOCIATION:

_____ Declaration of Condominium and Amendments

_____ Articles of Incorporation and Amendments

_____ Rules and Regulations (*Owners are responsible for the actions of Tenants*)

Applicant Signature: _____ Date: _____

Applicant Signature: _____ Date: _____

RESERVED FOR ASSOCIATION USE

Application Received:

Date: _____

Time: _____

Approved by: _____

Marsh Island Homeowners Association, Inc.

c/o A.R. Choice Management, Inc.

100 Vista Royale Blvd., Vero Beach, FL 32962

Phone (772) 567-0808 ~ Fax (772) 567-2551

Abe@archoice.com ~ Pam@archoice.com

ITEMS TO BE TURNED OVER AT CLOSING BY SELLER

AT CLOSING, THE SELLER(S) MUST PROVIDE:

_____ A COPY OF THE ASSOCIATION’S “GOVERNING DOCUMENTS” WHICH INCLUDES THE ARTICLES OF INCORPORATIONS, DECLARATION OF COVENANTS AND AND AMENDMENTS (if any).

If seller fails to provide a set of Documents, to Buyer, a copy may be obtained by A.R. Choice Management at the following cost. Please initial which set of documents you require.

- (a) _____ Already have a set of Documents from the Seller.
- (b) _____ Request Electronic set of Documents (forwarded to my e-mail) at a cost of \$25.00 made payable to A.R. Choice Management (no cash or credit card please).
- (c) _____ Request Hard set set of Documents (for my Building & Master) at a cost of \$100.00 made payable to A.R. Choice Management (no cash or credit card please).

_____ GATE CLICKER

_____ CLUBHOUSE KEY

(Additional gate clickers can be purchased at the cost of \$40.00 (no cash or credit card). Checks made payable to Marsh Island HOA Association, Inc. These clickers can be obtained at the AR Choice Management office, 100 Vista Royale Blvd., Vero Beach, FL 32962, phone 772-567-0808)

Buyer Signature _____ Date _____

Buyer Signature _____ Date _____

Marsh Island Homeowners Association, Inc.

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HOMEOWNER QUESTIONNAIRE

Owner Name(s):

Account/Unit #:

Address #:

Local Phone Numbers:

Res: (____) _____ Cell: (____) _____ Work: (____) _____

~ **Alternate Mailing Address** (if different than property address) ~

Address: _____

City: _____ State: _____ Zip: _____

Res: (____) _____ Cell: (____) _____ Work: (____) _____

Email: _____

~ (**Contact Person In Case Of Emergency**) ~

Name (s): _____

Address: _____

City: _____ State: _____ Zip: _____

Res: (____) _____ Cell: (____) _____ Work: (____) _____

Email: _____

Do you wish to be listed in the Resident Directory if published ? Yes: _____ No: _____

Should your email address be included in the Directory if published ? Yes: _____ No: _____

PLEASE RETURN THIS FORM TO OUR OFFICE.
Please be sure to inform our office anytime your mailing address changes.

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CERTIFICATE OF APPOINTMENT OF VOTING REPRESENTATIVE

THIS IS TO CERTIFY that the undersigned, constituting all of the record owners of

(address) _____, in Marsh Island Homeowners Association,

Inc. have designated: _____

(Print name of voting representative)

as their representative to cast all votes and to express all approvals that such owners may be entitled to cast or express at all meetings of the membership of the Association and for all other purposes provided by the Declaration, Articles and Bylaws of the Association.

The following examples illustrate the proper use of this Certificate:

- Unit owned by Bill and Mary Rose, husband and wife. Voting Certificate **required** designating either Bill or Mary as the voting representative. NOT A THIRD PERSON.
- Unit owned by John Doe and his brother, Jim Doe. Voting Certificate **required** designating either John or Jim as the Voting Representative. NOT A THIRD PERSON.
- Unit owned by Overseas, Inc., a corporation. Voting Certificate **required** designating person entitled to vote, signed by the President or Vice President of Corporation and attested by Secretary or Assistant Secretary of Corporation.
- Unit owned by John Jones. No Voting Certificate required.

This Certificate is made pursuant to the Declaration and the Bylaws and shall revoke all prior Certificates and be valid until revoked by a subsequent Certificate.

Dated this _____ day of _____, 200____

Printed Name of Owner

Signature of Owner

Printed Name of Owner

Signature of Owner

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**Consent to Receive Marsh Island Homeowners Association, Inc. Notices
Via Electronic Transmission**

In order for the Association to send via email, notices that would otherwise require regular postal mailing, the Association must receive and keep in the records this written consent form. Therefore, the board requests that you sign and date this document and send it via regular mail, certified mail, other commercial delivery service, fax message, email attachment, or hand delivery to:

Marsh Island Homeowners Association, Inc.
c/o A.R. Choice Management, Inc.
100 Vista Royale Blvd,
Vero Beach, FL 32962
pam@archoice.com

I/we, _____, owner(s) of _____ consent to receive via electronic transmission all and any documents, notices, or invoices that the board of association may elect to send to me, or is otherwise required to send to me as an owner.

The email address(es) to use for those notices is/are:

_____ @ _____
_____ @ _____

I/we agree to notify the Association if at any time there is a change in my/our email address, but such notification of a new address shall not constitute a revocation in the electronic consent.

I/we understand that I/we may revoke this consent at any time by delivering in the same manner as this consent my/our written and signed instruction to revoke consent. I/we also understand that should the board of association experience two consecutive unsuccessful attempts to send any notice, that such experience constitutes an automatic revocation of my/our consent.

Signature

Date

Signature

Date

Community & Utility Phone Numbers

Electric Power

Florida Power & Light

www.fpl.com

(800) 226-3545

Telephone

AT&T (800) 222-0300

Comcast

940 12th Street, Vero Beach FL 32960

(772) 200-3830

Trash and Recycle Collection

Waste Management

(321) 723-4455

Pick Up on Fridays

Post Office

(772) 567-5206

Water & Sewer

Indian River County

(772) 770-5300

www.ircutilities.com