

## THE ISLAND CLUB OF VERO BEACH

To: All Island Club Homeowners

From: Wayne Samson, President

Subject: Declaration of Covenants, Conditions and Restrictions

You may recall that amendments to the Declaration were approved by a vote of homeowners at our last Annual Meeting in December 2010. Those amendments “cleaned up” the Declaration by eliminating unnecessary references to the developer Beazer, adding provisions to comply with applicable law, and incorporating into the document all previously approved amendments. The approved amendments have been recorded with the Indian County Clerk and are now in effect.

We are now posting on the Island Club website the complete, merged Declaration for your ready access. This version of the Declaration eliminates all of the underlined additions and crossed-out deletions which were in the version previously on the website, and in the official document recorded with the County. This clean version is being made available only for your convenience – the original document and the various amendments as recorded are the “legal documents” that must be available and are required to be furnished to any new buyers. Translation: you may rely on this merged document as being a complete version of our Declaration, but you or your attorney or escrow agent must provide to any subsequent buyer the original and amended documents as recorded.

We hope the new merged document will make it easier for you to read and understand the Declaration.

Wayne Samson  
June 2011

**MERGED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
THE ISLAND CLUB OF VERO BEACH**

**(through May 2011)**

**ARTICLE I: DEFINITIONS**

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1. "Articles" shall mean the Articles of Incorporation of The Island Club of Vero Beach Homeowners Association, Inc. as filed with the Florida Secretary of State, and attached as Exhibit "B".

2. "Assessment" means a share of the funds which are required for the payment of Common Expenses, which from time to time is assessed against the Members of the Association. Assessments include "Base Assessments" and "Special Assessments".

3. "Association" shall mean and refer to The Island Club of Vero Beach Homeowners Association, Inc., its successors and assigns.

4. "Association Property" shall mean all real and personal property transferred to the Association for the benefit of all Members or for which the Association has maintenance responsibilities.

5. "Board" shall mean the Board of Directors of the Association.

6. "Business" and "Trade" 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: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

7. "By-Laws" shall mean and refer to the By-Laws of the Association, attached as Exhibit "C".

8. "Common Area" shall mean all real and personal property which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term "Common Area" may sometimes be used interchangeably with the term "Association Property" or "Common Property".

9. "Common Expenses" shall mean and include the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to this Declaration, the By-Laws, and the Articles.

10. "County" shall mean Indian River County, Florida.

11. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be reasonably and more specifically determined by the Board from time to time.

12. "Declaration" shall mean the easements, covenants, conditions, restrictions, and all other terms set forth in this document, as may be amended from time to time.

13. "Developer" shall mean and refer to BEAZER HOMES CORP., a Tennessee corporation, its successors and assigns.

14. "Environmental Conservation Area" shall mean that portion of the Common Area, which is intended to be preserved and maintained by the Association in a natural state in perpetuity. The Environmental Conservation Area shall include preserved and created wetlands, and the preserved upland areas as more specifically described and located on any plat of any portion of The Island Club.

15. "Homeowners Documents" means in the aggregate this Declaration, the Articles, and the By-Laws of the Association; as well as all of the instruments and documents referred to herein and executed in connection with The Island Club (defined herein).

16. "Institutional Mortgagee" shall mean any lending institution having a first lien on any property subject to this Declaration, including but not limited to any of the following institutions: an insurance company or subsidiary thereof, a federal or state savings and loan association, a federal or state building and loan association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a federal or state banking association, a real estate investment trust, or any mortgage banking company authorized to do business in the State of Florida.

17. "Lot" shall mean and refer to any unimproved portion of the Property (and a subdivided lot of record) upon which it is intended that a Unit, defined herein, shall be constructed.

18. "Member" shall mean a member of the Association.

19. "Mortgage" shall mean a mortgage, a deed to secure a debt, or any form of security deed.

20. "Mortgagee" shall mean a beneficiary or holder of a Mortgage. The term, "Mortgagee", shall include the term, "Institutional Mortgagee", defined above.

21. "Mortgagor" shall mean a Person who gives a Mortgage.

22. "Owner" shall mean and refer to one (1) or more Persons (defined herein) who hold the record title to any Lot and/or Unit (defined below) which is created on the property subject to this Declaration, but excluding any party holding an interest merely as security for the performance of an obligation.

23. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

24. "Property" shall mean all of the real and personal property subject to this Declaration.

25. "Recreational Facility" shall mean and refer to the tennis, swimming, social, and other recreation facilities constructed within the Property.

26. "Roads" shall mean and refer to any street or thoroughfare within the Common Areas, and which is dedicated to the Association, or to any governmental agency, whether same is designated, for example, by way of illustration and not as limitation, as a street, avenue, boulevard, drive, place, court, road, terrace, way, circle, lane, walk, or similar designation.

27. "Rules and Regulations" shall mean the rules, regulations, and policies which may be adopted by the Board from time to time by resolution duly made and carried.

28. "Special Assessment" shall mean and refer to those assessments levied in accordance with the further terms of this Declaration.

29. "Subsequent Amendment" shall mean an amendment to this Declaration which may subject additional property to this Declaration, may withdraw property from the coverage of this Declaration, and may also, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the Property, or on any land submitted by a Subsequent Amendment to the provisions of this Declaration.

30. "Unit" shall mean the home and related improvements constructed upon a Lot within the Property. Upon completion of construction of a Unit on a Lot, such Lot and the improvements thereon shall collectively be considered to be a "Unit" for purposes of this Declaration.

31. "Water 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, overdrainage, environmental degradation,

and water pollution or otherwise affect the quantity and quality of discharges.

## **ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION**

1. Initial Property. The Property which is initially subject to the covenants, conditions, and restriction imposed by this Declaration is described in Exhibit "A".

2. Other Real Property Interests. Any real property rights and/or interests owned by or benefiting the Association, including but not limited to rights and/or interests created through easement agreements, may be subjected to the covenants, conditions and restrictions contained in this Declaration.

3. Rights Pursuant to Plat Dedication. The Plat for Island Club Riverside, Phase IV provides that "Island Club Manor right-of-way is hereby dedicated for access and egress purposes to the owners of the adjacent property lying northward of this site, their successors and assigns, conditioned on a pro-rata sharing of the maintenance cost and recovery of capital costs based upon the number of trips generated by county approved development projects for the properties of the respective parties: and also conditioned on the Grantor and Grantee entering into an Easement Agreement mutually agreeable to the parties as to reasonable terms, conditions and considerations." The Developer specifically confirms the limitation of authority of The Island Club of Vero Beach Homeowners Association to enter into any such agreement on its behalf and hereby provides notice to all involved that the subject referenced Plat language is intended to benefit the Developer and that no such grant is valid unless and until approved by Beazer Homes Corporation by its execution of appropriate documents by not less than two (2) of its corporate officers who must be Beazer Homes Corp. Division President – Mid Florida and Beazer Homes Corp. Division Vice President – CFO Mid Florida or the President of Beazer Homes USA and one (1) Vice President of Beazer Homes USA in order to bind Beazer Homes Corporation to any such agreement affecting its rights under Paragraph 9. of the Plat of Island Club Riverside Phase IV as amended in Plat Book 15, Page 94, Public Records of Indian River County, Florida.

## **ARTICLE III: PROPERTY RIGHTS**

1. Use of Common Areas. Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time, and subject to any restrictions or limitations contained in this Declaration or in any deed conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board, and in accordance with procedures which it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's lessee. The rights and easements of enjoyment created hereby shall be subject to the following:

a. The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real and personal property as security for

money borrowed or debts incurred.

b. The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure.

c. The right of the Association to suspend:

(i) the right of an Owner to use Recreational Facilities within the Common Areas for any period during which an Assessment or any other charge against such Owner's Unit remains delinquent; and

(ii) the enjoyment rights and easements of any Owner for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (other than a delinquent Assessment), of the Declaration, any applicable Subsequent Amendment, the Articles, the By-Laws, or the Rules and Regulations of the Association after notice and hearing pursuant to the By-Laws.

d. The right of the Association to maintain the Common Property.

e. The right of the Board to adopt rules and regulations affecting the use and enjoyment of the Common Area, including, without limitation, rules restricting use of Recreational Facilities within the Common Area to occupants of Units and their guests and rules limiting the number of guests who may use the Common Area.

f. The Board shall have the right to post motor vehicle speed limits throughout the Common Areas, and to promulgate traffic regulations for the Roads. The Board may also promulgate procedures for the enforcement of the traffic regulations, including, without limitation, the assessments of fines against Owners who violate the traffic regulations and against Owners, whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. The fines will be levied as a Special Assessment upon the Owner who violates the traffic regulations, or upon the Owner whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. Before any fine shall be effective, the Owner shall be entitled to notice and an opportunity to be heard before a committee appointed or designated by the Board. Notwithstanding anything contained herein to the contrary, the foregoing shall be subject to the provisions in the By-Laws which provide for the assessment of fines, subject to applicable law, as amended from time to time.

g. The right of the Association to dedicate or transfer all, or any part, of the Common Property to any governmental or quasi-governmental agency, authority, utility, water management or water control district.

h. The Restrictions contained on any plat, or filed separately, with

respect to all or any portion of the Property.

i. All of the provisions of this Declaration, the Articles, and By-Laws of the Association and all exhibits thereto, and all Rules and Regulations adopted by the Association, as same may be amended from time to time.

j. The Owners' easements of enjoyment shall be subject to easements, hereby reserved over, through and underneath the Common Property, and the Units for present and future utility services to the Property, including, but not limited to, easements for water pipes, sanitary sewer pipes, drainage pipes, irrigation pipes, telephone cables, and street lights. Easements for such utility services were reserved by Developer for all buildings and improvements which have been or may be constructed on the Property.

k. In case of any emergency originating in, or threatening the Property or any Unit, regardless of whether the Owner is present at the time of such emergency, the Board, or any other Person authorized by the Board, or the management agent under a management agreement, shall have the right to enter the Property or such Unit, for the purpose of remedying, or abating, the cause of such emergency, and such right of entry shall be immediate.

2. Title to Common Area. The title to the Common Area is held by the Association. The Association shall be responsible for the management, maintenance, and operation of the Common Areas, and for the payment of all real estate taxes and other charges which are liens against the Common Area, from and after the recording of this Declaration. Certain portions of the Common Areas may be reserved as limited common areas for the exclusive use and benefit of certain Unit Owners.

#### **ARTICLE IV: ASSOCIATION FUNCTION; MEMBERSHIP AND VOTING RIGHTS**

1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area within the Property. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable Rules and Regulation as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles, and Florida Law.

2. Membership. The Association shall have one (1) class of membership. A person shall automatically become a Member upon acquisition of fee simple title to any Unit, by filing a deed in the Public Records of the County. Membership shall continue until such time as the Member transfers or conveys his interest of record or the interest is transferred or conveyed by operation of law, at which time Membership, with respect to the Unit conveyed, shall automatically be conferred upon the transferee. Membership shall be appurtenant to, and may not be separated from, ownership of

property subject to the Declaration. No person holding an interest of any type or nature whatsoever in a Unit only as security for the performance of an obligation, shall be a member of the Association.

3. Voting. Matters on which Members are entitled to vote shall be determined by a majority of votes cast. Each member shall be entitled to one (1) equal vote for each Unit owned by such Member, as to matters on which the Members are entitled to vote. When more than one person holds the title to a Unit, such persons shall together constitute one Member and the vote attributable to such Unit shall be exercised as they, among themselves, determine, with notice of such determination in writing to the Association Secretary; provided, however, that in no event shall more than one (1) vote be cast with respect to each Unit. As for any Member that is an entity other than a natural person, the entity shall likewise file with the Secretary a written notice designating the name of an individual who shall be authorized to represent the Member's vote for that Unit.

4. Procedure for Voting. Membership voting shall be in the manner provided for in the By-Laws.

#### **ARTICLE V: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall own, manage, and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Such property shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the conveying deed or instrument.

3. Rules and Regulations. The Association, through its Board, may make and enforce reasonable rules governing the use of the Property, including Lots, Units and the Common Area, in addition to, further defining or limiting, and, where specifically authorized hereunder, creating exceptions to those covenants and restrictions set forth in this Declaration. Such rules shall be binding upon all Owners, occupants, invitees, and licensees until and unless repealed or modified in a regular or special meeting by vote of the Members representing a majority of the Lot/Unit Owners present at such meeting, in person or by proxy, provided a quorum is established.

4. Implied Rights; Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except

as otherwise specifically provided in this Declaration, the By-Laws, Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Membership.

5. Indemnification. To the greatest extent allowed by law, the Association shall indemnify every officer, director, and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) 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, negligence or other act or failure to act, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall defend, indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment, action or inaction. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the County, or to any other local, state, or federal governmental entity, subject to such approval as may be required by this Declaration.

7. Security. The Association may, but shall not be obligated to, make improvements to, and/or maintain or support certain activities within the Property designed to make the Property safer than it otherwise may be. THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY, NOR SHALL IT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, ALARM SYSTEM, OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL PREVENT LOSS, OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS LESSEES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD

## PARTIES.

8. Recycling Programs. The Association may establish a recycling program and recycling center within the Property and in such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

9. Surface Water Rights. The Association may establish programs for reclamation of surface water and storm water runoff for appropriate uses within the Property, and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from Units. The Board shall also have the right to establish restrictions on the use of surface water within the Property. Lakes, canals, and other open surface waters within the Property are designed as water retention and water management areas and are not designed solely as aesthetic features. From time to time, low ground water elevations or drought conditions may cause the Common Area lakes, canals, and other water management areas to be shallow.

### 10. Water Management System.

a. Maintenance of Water Management System. The Association shall be responsible for the maintenance, operation and repair of the Water Management System. Maintenance of the Water Management System 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 Water Management System shall be as permitted or, if modified, as approved by the St. Johns River Water Management District. As further provided in this Declaration, the Association shall be entitled to (i) assess Members for the cost of operation, maintenance and repair of the Water Management System including but not limited to work within retention areas, drainage structures and drainage easements, (ii) establish rules and regulations with respect to the operation and maintenance of the water management system, and, (iii) contract with third parties for the provision of such operation and maintenance. In addition, in the event that a drainage swale is constructed upon any Lot, for the purpose of managing and containing the flow of excess surface water, if any, found upon such Lot from time to time, the owner of such Lot, including builders, shall be responsible for the maintenance, operation and repair of the drainage swales on the Lot. Maintenance, operation and repair shall mean the exercise of practices, such as mowing and erosion repair, which allow a drainage swale 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 a drainage swale is prohibited. No alteration of a drainage swale shall be authorized and any damage to a drainage swale, whether caused by natural or human-induced phenomena, shall be repaired and the damaged drainage swale shall be returned to its former condition as soon as possible by the Owner of the Lot upon which the drainage swale is located.

b. Notices and Disclaimers as to Water Bodies. NEITHER THE ASSOCIATION, NOR ANY OF ITS OFFICERS, DIRECTORS, COMMITTEE OR BOARD MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES"), SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES SHALL, FROM TIME TO TIME, EXCAVATE, CONSTRUCT AND MAINTAIN LAKES AND WATER BODIES WITHIN OR IN PROXIMITY TO THE PROPERTY. NOTWITHSTANDING THE FOREGOING, EXCAVATION OR CONSTRUCTION OF WATER BODIES SHALL BE PROHIBITED UNLESS AUTHORIZED BY THE APPLICABLE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT PERMIT. IN THE EVENT THAT THE EXCAVATION OR CONSTRUCTION OF WATER BODIES IS NOT AUTHORIZED BY SAID PERMIT, SUCH EXCAVATION OR CONSTRUCTION MAY ONLY TAKE PLACE IF A PERMIT MODIFICATION IS OBTAINED FROM THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE PROPERTY, EACH SUCH OWNER, OCCUPANT OR USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW CHILDREN, GUESTS OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY LAKE OR WATER BODY WITHIN THE PROPERTY, EXCEPT AS SPECIFICALLY PERMITTED BY THIS DECLARATION; (iii) THAT THE ASSOCIATION AND THE OTHER LISTED

PARTIES SHALL NOT BE LIABLE BUT, RATHER, SHALL BE HELD HARMLESS, FROM ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES ; (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE PROPERTY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

c. Assessments for Maintenance of Off-site Water Management Systems. In addition to the Water Management Systems, defined herein, the Association has or may, from time to time, in its sole discretion, enter into agreement(s) or arrangement(s) with third parties for the management and drainage of excess (beyond the capacity of the Water Management System) surface water and stormwater discharge into off-site surface water and stormwater management systems ("Off-site Water Management Systems"). Any costs associated with said agreements or arrangements, including but not limited to a proportionate share of the costs of maintenance of such Off-site Water Management Systems, shall be assessed equally among the Unit Owners, as part of the Common Expenses pursuant to the provisions of this Declaration.

d. Indemnification. Each Owner shall severally indemnify, defend and hold the Association harmless from and against any and all costs, expenses, liabilities, fines, penalties and clean-up costs incurred by the Association, as a result of any damage or alteration to the Water Management System caused by such Owner, or any unlawful discharge of such Owner into the Water Management System. In the event any damage to the Water Management System by a Owner is not reimbursed by such Owner upon demand, the Association shall levy and assess an individual Assessment against such Owner to cover the cost incurred by the Association in correcting such damage, alteration or unlawful discharge, and shall pay over the amount thereof to the Association.

e. Enforcement by the St. Johns River Water Management District. 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 Water Management System.

## ARTICLE VI: MAINTENANCE

### 1. Association's Responsibility.

a. The Association shall maintain and keep in good repair the Common Areas. The maintenance of the Common Areas shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all Roads and rights-of-way; all plantings and sodding of such rights-of-way; all perimeter plantings and sod; right-of-way, perimeter, and other Association irrigation facilities and pumps; perimeter walls or fences; bridges; bicycle/pedestrian paths; sidewalks; lakes; water features; Recreational Facilities: office facilities; street lights; road and identification signage, including Water Management System and Environmental Conservation Area signage; security facilities and equipment; drainage facilities and water control structures; water and lake treatment facilities; Association parking facilities; sod, landscaping and other flora located on the Common Areas; the Water Management System; the Environmental Conservation Area; and other structures and improvements situated upon the Common Area.

b. The cost to the Association of maintaining the Common Areas shall be assessed equally among the Unit Owners, as part of the Common Expenses pursuant to the provisions of this Declaration.

c. The Association may maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

d. The Association shall maintain the lawn and landscaping on each Unit. Such maintenance shall include, but shall not be limited to mowing the lawn and operating and maintaining an irrigation system, which serves the entire Property, including all individually owned Units. The cost to the Association of maintaining the lawn and landscaping on each Unit shall be assessed equally among the Unit Owners, as part of the Common Expenses pursuant to the provisions of this Declaration. The Association shall have the right to enter upon all Lots to perform such lawn and landscaping maintenance. Notwithstanding the foregoing, in the event that any portion of a Unit is enclosed by a fence, screened enclosure or any other enclosure, of any kind, pursuant to the terms and conditions of this Declaration: (i) the Owner of said Unit shall be required to maintain the lawn and landscaping within the enclosed portion of the Unit, such maintenance to be consistent with maintenance performed by the Association throughout the Island Club and the Community-Wide Standard, (ii) the Owner shall continue to pay any and all assessments associated with the Unit, without any reduction, whatsoever, in connection with the Owner's maintenance responsibilities, and (iii) the Association shall continue to have the right to enter upon the enclosed portion of the Unit for the operation and maintenance of any

portion of the irrigation system installed on the Unit.

e. The Association shall be responsible for garbage pickup and removal. The procedure for such pickup and removal shall be established by the Association, in its sole discretion.

## **ARTICLE VII: EASEMENTS**

1. Access Easements. A perpetual non-exclusive easement is held by the Association and the Unit Owners, their families, guests, invitees, licensees and lessees upon, over, and across the bicycle/pedestrian paths, sidewalks, walkways, rights-of-way and other Common Areas. An additional perpetual non-exclusive easement is held by the Association over, across, through, and under all portions of the Property for the purpose of performing the maintenance and repair requirements of the Association as described in this Declaration. Except in the event of an emergency or as otherwise provided in this Declaration, the Association, its assigns or representatives may enter upon an Unit Owner's property only after reasonable notice has been given to the Owner.

2. Easements for Utilities.

a. There are hereby reserved to the Association, and its assignees and designees, access and maintenance easements upon, over, across, and under all of the Property to the extent reasonably necessary for the purpose of constructing/installing, replacing, repairing, maintaining Roads, bicycle/pedestrian paths, walkways, sidewalks, lakes, wetlands, drainage systems, street lights, identification signage, and all utilities, including, without limitation, water, irrigation, sewer, electricity, telephone, cable tv, or communication lines and systems, and for the purpose of installing any of the foregoing on property which the Association owns or within easements designated for such purposes on recorded plats of the Property.

Except as otherwise provided herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under, or through any existing Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit, and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

b. The Association hereby also reserves the right to grant a perpetual non-exclusive easement to all utility or service companies servicing The Island Club upon, over, across, through, and under the Common Areas and such other portions of the Property on which utility facilities may be located or relocated for ingress, egress, installation, replacement, repair, and maintenance of all utility

and service lines and systems including, but not limited to water, irrigation, sewer, telephone, electricity, cable tv, or communication lines and systems. It shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said Property, to excavate for such purposes and to affix and maintain wires, facilities, circuits, and conduits on, in, and under the Common Areas, providing such company restores any disturbed area substantially to the condition existing prior to their activity. No utility service line or system may be installed or relocated within the Common Areas without the consent of the Association.

3. Easements for Encroachments. The Association hereby reserves the right to grant easements for encroachment in the event any improvements upon the Common Areas now or hereafter encroaches upon a Unit, or in the event that any Unit now or hereafter encroaches upon any other Unit, as a result of minor inaccuracies in survey, construction, reconstruction, or due to settlement or movement or otherwise to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. The encroaching improvements shall remain undisturbed as long as the encroachment exists. This easement for encroachment shall also include an easement for the maintenance and use of the encroaching improvements, provided, however, that at no time shall there be any encroachment onto the Water Management System or the Environmental Conservation Area, without the written consent of the St. Johns River Water Management District. 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.

4. Easements for Drainage. Every Unit and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property, provided, however, no Person may alter the natural drainage on any Unit so as to materially increase the drainage of storm water onto adjacent portions of the Property without the consent of the Owner of the affected property.

5. Right of Entry. The Association shall have the right, but not the obligation to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to this Declaration, and to inspect for the purpose of ensuring compliance with this Declaration, any Subsequent Amendment, By-Laws, and the Rules and Regulations, which right may be exercised by any member of the Board its officers, agents, employees, and managers, and all policemen, firemen, emergency medical personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation or as otherwise provided in this Declaration, 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 upon any 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 a written request of the Board, but shall not authorize entry into any single family detached dwelling without

permission of the Owner, except by emergency personnel acting in their official capacities.

6. Water Management System Easement. The Association shall have a perpetual non-exclusive easement over all areas of the Water Management System for access to operate, maintain or repair the system. By this easement, the Association shall have the right to enter any portion of any Unit which is part of the Water Management System, at a reasonable time and in a reasonable manner, to operate, maintain or repair the Water Management System as required by the St. Johns River Water Management District permit. Additionally, the Association shall have the perpetual non-exclusive easement for drainage over the entire Water Management System. No person shall alter the drainage flow of the Water Management System, including buffer areas or swales, without the prior written approval of the St. Johns River Water Management District. The foregoing easements shall cover all lakes and drainage easements located anywhere within the Property. The Association shall have the right to contract for maintenance of any portion of the Water Management System with an established water management or water control district or with any other party.

7. Easement for Recreational Facilities. Subject to the terms and provisions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board of Directors, every Owner and his or her family, tenants and guests shall have the non-exclusive right, privilege and easement of access to and the use and enjoyment of any Recreational Facilities and amenities as may be located in the Common Areas. An Owner may assign to the tenant of his or her Unit such Owner's rights of access to and use of said Recreational Facilities so that such tenant, his or her family and guests shall be entitled to the access to and use and enjoyment of the Recreational Facilities on the same basis as an Owner and his or her family and guests.

8. Ocean and Intracoastal Access Easements. There is an ocean access easement and an intracoastal access easement, which easements are recorded in the public records of the County and benefit the Property. Said easements shall provide Owners, their guests, families and invitees with access from the Property to the ocean and the intracoastal waterway. These easements shall be used (i) exclusively for pedestrian ingress and egress, and no vehicular traffic shall be permitted thereon, and (ii) in accordance with any terms and conditions contained therein.

## **ARTICLE VIII: ASSESSMENTS**

1. Creation of Assessments. There are hereby created Assessments for Common Expenses as may from time to time specifically be authorized by the Board to be commenced at the time and in the manner set forth in this Article. There shall be two (2) types of Assessments: (a) Base Assessments to fund expenses for the benefit of all Members of the Association; and (b) Special Assessments as described herein.

a. Base Assessments shall be levied equally on all Units, except as otherwise provided herein. Special Assessments shall be levied as provided herein. Each Owner, by acceptance of his or her deed is deemed to covenant and agree to pay these Assessments.

b. The Association shall, upon demand at any time, furnish to any Owner liable for any type of Assessment, a certificate in writing signed by an officer of the Association setting forth whether such Assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such Assessment therein stated to have been paid.

c. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of any Assessment for delinquent Members. Unless the Board otherwise provides, the Base Assessments shall be payable not less frequently than quarter-annually in advance. Base Assessments shall be billed on the fifteenth day of December, March, June, and September of each year for Assessments due and payable on the first day of January, April, July, and October, respectively of each year. In the event that any Owner fails to pay said Assessments in a timely manner, the Association shall be entitled to assess such Owner with a late fee of an amount established by the Board of Directors, in accordance with applicable law.

d. No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments 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 of the County or other governmental authority.

2. Computation of Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of the fiscal year, to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include and shall separately list all revenues and Common Expenses, and an estimate of the previous year's surplus or deficit. All fees (if any) for Recreational Facilities must be set out separately. Except as otherwise provided by law, the Board shall cause a copy of the budget and the amount of assessments to be levied against each Unit for the following year to be delivered to each Owner, or to be made available to each Owner, within the time limits established in the By-Laws for inspection of Association

Records and Books. The budget and the assessment shall become effective unless disapproved at a meeting of the Members by a vote of Members or their alternates representing at least a majority of all the Members in the Association.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

The budget may include, without limitation, the following listed line items:

a. All expenses necessary to meet the Association's responsibility to maintain the Common Areas and Units in accordance with the requirements of this Declaration. Including, by way of illustration and not as limitation, such Common Area expenses as: maintenance of the Water Management System (including any maintenance charges for the Off-site Water Management System defined herein), irrigating, grass cutting, trimming, fertilizing, pest control, and the like, in a manner consistent with the Community-Wide Standard.

b. All charges levied for utility services to the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, electricity, telephone, sewer, cable tv, and any other type of utility or service charge.

c. The premiums on any policy or policies of insurance required under this Declaration, together with the costs of such other policies of insurance, as the Board, with the consent of the Unit Owners at any meeting thereof, shall determine to be in the best interest of the Association, as well as all expenses associated with the retention of an "Insurance Trustee". The functions of the Insurance Trustee, if any, shall include holding all original policies purchased by the Association, being named as loss payee, distributing proceeds of such insurance, assisting in the reconstruction of improvements from insurance premiums and performing such other functions as shall be agreed upon.

d. The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under the Declaration, including the collection of sums owed by a particular Unit. In addition, the Association may retain a managing company or contractors or property manager to assist in the operation of the Association and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs or expense of any management company or contractor or property manager so retained shall be deemed to be part of the Association's expense.

e. All taxes levied or assessed upon the Common Areas, by any and all taxing authorities, including all taxes, charges and assessments, imposition

and liens for public improvements, special charges and assessments; and, in general, all taxes on personal property and improvements which are now and which hereinafter may be placed in the Common Area, including any interest penalties and other charges which may accrue on such taxes.

f. The cost to the Association to indemnify its officers and members of the Board for all costs and expenses whatsoever incurred in pursuance of their duties, obligations and functions hereunder as set forth in the Articles of Incorporation.

g. The costs to establish an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas and the payments of other common expenses (the "reserves") in the amounts determined proper and sufficient by the Board, if any. Each Owner acknowledges, understands and consents that reserves are the exclusive property of the Association as a whole, and that no Owner shall have any interest, claim or right to any such reserves or funds composed of the same. The Association shall be responsible for maintaining any reserves in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.

### 3. Special Assessments.

a. The Association may levy a Special Assessment or Special Assessments against all Owners. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

b. The Association may levy a Special Assessment to obtain all sums necessary to repair, replace, construct or reconstruct (collectively referred to as "repair") any buildings or improvements located in the Common Areas damaged by any casualty to the extent insurance proceeds are insufficient for repair. Any difference between the amount of insurance proceeds received on behalf of the Association with respect to repair and the actual cost of the repair ("repair sums") shall be a Common Expense for which the Association shall levy a Special Assessment against all Units and Owners thereof to obtain the funds necessary to pay for such repair. The Association shall establish an account with an Institutional Mortgagee located in the County, and deposit into such account all repair sums and all insurance proceeds collected for the costs of repair. The Association shall proceed so that repairs shall be completed within one (1) year from the date of damage, if possible.

c. The Association may also levy a Special Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of the Declaration, any amendments thereto, the Articles, By-Laws, and the Rules and Regulations.

d. The Association may also levy a Special Assessment or Special Assessments against all Owners and Units for any Common Expenses for which the budget or Base Assessments is/are insufficient. Such Special Assessment or Special Assessments may be determined by the Board of Directors, from time to time, and shall be payable in such manner and in such installments as determined by the Board, and if so determined by the Board, the installments may extend beyond the fiscal year in which the Special Assessment is levied or adopted.

4. Date of Commencement of Base Assessments. The Base Assessments provided for herein shall commence as to each Unit at the time that a certificate of occupancy is issued for the Unit by the appropriate governmental authority. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first Base Assessment shall be adjusted according to the number of days remaining in the fiscal year at the time Assessments commence on a Unit.

5. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from the payment of Base Assessments and Special Assessments:

- a. all Common Areas; and
- b. all property dedicated to and accepted by any governmental authority or public utility.

6. Capital Contribution. Each initial and subsequent purchaser of a Unit shall pay to the Association, upon the closing of the purchase of such Unit, an amount equal to one-quarter (1/4) of the then current annual assessment applicable to such Unit, as a contribution for capital expenditures of the Association ("Capital Contribution"). The Capital Contributions shall be held in a segregated account and may be used only for the purpose of defraying, in whole or in part, the cost of any (i) unforeseen expenditures, (ii) capital construction, (iii) reconstruction, repair or replacement of a capital improvement or (iv) capital equipment, fixtures or personal property used in conjunction with the Common Area or other properties maintained by the Association pursuant to this Declaration. The Capital Contributions may only be used as provided for herein. The Capital Contribution shall be in addition to, and not in substitution or satisfaction of, all other assessments due with respect to such Unit. The Association shall have a lien against each Unit for the Capital Contribution in the same manner and to the same extent as the Association's lien for other assessments as set forth in this Article VIII.

#### **ARTICLE IX: COLLECTION OF ASSESSMENTS.**

1. Liability for Assessments. A Unit Owner, regardless of how title is acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, shall be liable

for all Assessments and other charges coming due while that person is the Unit Owner. Except as provided in Section 4 of this Article IX, the Unit Owner shall also be jointly and severally liable with the previous Owner for all unpaid Assessments and other charges that came due up to the time of the transfer of title. This liability is without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the Owner. The person acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Lot and proceed in the same manner as provided herein and in Chapter 720, Florida Statutes, as same may be amended from time to time, for the collection of unpaid Assessments. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Areas or Association Property or by the abandonment of the Unit for which the Assessments are made or otherwise.

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 the highest lawful rate from the date due until paid. In addition to the above stated interest, the Association shall charge an administrative late fee in an amount not to exceed the highest amount provided for in Chapter 720, Florida Statutes, as same may be amended from time to time, on Assessments and installments thereof not paid when due. All partial payments upon account shall be applied in the manner prescribed in Chapter 720, Florida Statutes, as same may be amended from time to time. The Association has a lien on each Lot to secure the payment of Assessments. The lien is effective from and shall relate back to the earliest date permitted by law, but in no event later than the date of recording of the original Declaration. However, as to a First Mortgagee of record, the lien is effective as of the date of the recording of a claim of lien in the Public Records of Indian River County. All claims of lien must state the description of the Lot, the name of the record Owner, the name and address of the Association, the amount due and the due dates and must be executed and acknowledged by an officer or authorized agent of the Association. The claim of lien shall secure (whether or not stated therein) all unpaid Assessments, which are due at the time a claim of lien is recorded, as well as all regular and special Assessments which may be levied or which may accrue subsequent to the recording of the claim of lien and prior to satisfaction of the lien or the issuance of a certificate of title, together with interest, late charges and all reasonable costs and attorney's fees incurred by the Association incident to the collection and foreclosure process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien. The Association may bring an action in its name to foreclose its lien in the same 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 is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments. As an additional right and remedy of the Association, upon default in the payment of Assessments as aforesaid, the Association may declare the Assessment installments for the remainder of the fiscal year in which a claim of lien has been filed to be accelerated, as provided in Section 7 of this Article IX.

3. Appointment of Receiver to Collect Rental. If the Unit Owner remains in possession of the Unit or rents the Unit, the rents are hereby deemed assigned to the Association upon default by the Unit Owner in the timely payment of assessments and the Association may collect rental from the Unit Owner if the Unit Owner remains in possession after an action for foreclosure is filed, and may request the Court in its discretion to require the Unit Owner to pay such rental for the Unit into the Court Registry or the Association is entitled to the appointment of a receiver to collect such rental.

4. First Mortgagee. A First Mortgagee acquiring title to a Lot as a result of foreclosure of its first mortgage, or by deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership. In addition, the First Mortgagee is liable for the share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Lot which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such deed; provided, however, the First Mortgagee's liability may be limited to the maximum amount set forth in Chapter 720, Florida Statutes, as the same may be amended from time to time. If any unpaid share of Common Expenses or Assessments or other charges is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of Common Expenses or Assessments are Common Expenses collectible from all of the Unit Owners, including such acquirer, and such acquirer's successors and assigns.

5. Certificate of Unpaid Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee of a Unit, the Association shall provide a certificate stating whether all Assessments and other moneys owed to the Association by the Unit Owner with respect to his Unit have been paid. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association or its authorized agent may charge a reasonable fee for the preparation of the Certificate.

6. Installments. Regular Assessments may be collected no more frequently than monthly nor less frequently than quarterly, in advance, at the option of the Board of Directors. Special assessments shall be payable on such terms as may be established by the Board.

7. Acceleration of Assessment Installments Upon Default. If a Unit Owner shall be in default in the payment of an installment upon an Assessment, the Board may accelerate the remaining installments of the Assessment upon notice to the Unit Owner, and the then unpaid balance of the Assessment shall be due upon the date stated in the notice.

8. Set Off. Any funds due and payable by the Association to a Unit Owner under this Declaration, the Articles of Incorporation or the By-Laws, or under Chapter 720, Florida Statutes, shall be subject to a right of set-off for any amounts due and owing to the

Association by the Unit Owner under this Declaration, the Articles of Incorporation, the By-Laws, or Chapter 720, Florida Statutes, as the same may be amended from time to time.

## **ARTICLE X: INSURANCE**

1. Common Area Insurance. The Association shall maintain a policy or policies to insure the Common Area Improvements and personal property from casualty losses, and said policies shall be in such amounts so that the insured will not be a co-insurer except under deductible clauses required to obtain coverages at a reasonable cost.

a. The coverages for casualty losses will EXCLUDE the following:

(i) Land, foundations, excavations or other items that are usually excluded from insurance coverage.

b. The coverage for casualty losses will INCLUDE, where applicable, the following:

(i) Loss or damage by fire or other hazards covered by a standard extended coverage endorsement;

(ii) All other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement;

(iii) Agreed Amount and Inflation Guard Endorsement, when it can be obtained;

(iv) Demolition Cost Endorsements, Contingent Liability from Operation of Building Laws Endorsement, and Increased Cost of Construction Endorsement (if available);

(v) Steam Boiler Endorsement, if applicable, providing at least \$50,000.00 coverage for each accident at each location; and

(vi) A standard mortgagee clause naming, when appropriate, the Federal National Mortgage Association (FNMA) or the servicers for mortgages held by FNMA, their successors and assigns.

c. When appropriate and possible, the policies shall waive the insurer's right to:

(i) Subrogation against the Association and against the Owners, individually and as a group;

(ii) The prorate clause that reserves to the insurer the right to pay only a fraction of any loss 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, or by a member of the Board or by one or more Owners.

d. In addition, the policy shall provide that:

(i) Any Insurance Trust Agreement will be recognized;

(ii) The policy shall be primary, even if an Owner has other insurance that covers the same loss; and

(iii) The named insured shall be the Association for the use and benefit of the Unit Owners. The "loss payable" clause should show said Association or the designated insurance trustee as the agent for each Owner and each Owner's mortgagee.

2. Unit Insurance. Each Unit Owner shall maintain a policy or policies to insure his or her Unit from all casualty losses for the full replacement cost thereof (less any applicable reasonable deductible). If a Unit is damaged by a casualty, the affected Unit Owner shall promptly have his Unit repaired and rebuilt substantially in accordance with the architectural plans and specifications of the Unit.

3. Reconstruction and Repair after Casualty.

a. Under ordinary circumstances, Common Area improvements which are damaged by casualty shall be reconstructed and repaired. If a dispute arises as to whether a Common Area improvement should be repaired or reconstructed, the Board shall make the determination to repair or reconstruct. The Owners shall be bound by this determination. The Association shall have the right to specially assess all members of the Association if insurance proceeds are insufficient, for any reason, to repair or rebuild the affected Common Areas in accordance with this paragraph. The levy of any Special Assessment authorized pursuant to this paragraph shall be made in accordance with the Assessment powers and lien rights of the Association for Common Expenses.

b. Although it is impossible to anticipate all problems which may arise from a casualty, the intent is to try to assure that the Community-Wide Standard is maintained by requiring damaged Association property to be rebuilt or repaired and that unsightly and dangerous conditions are remedied as soon as possible. Any reconstruction and repair must be substantially in accordance with the plans and specifications for such property as originally constructed, or as existing at the time of the casualty, and in any event, according to plans and specifications approved by the Board.

4. Public Liability Coverage. The Association shall obtain comprehensive general liability coverage insuring the Association against any and all claims and demands made by any Person for injuries received in connection with the operation and maintenance of the Common Areas and improvements located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have limits of not less than \$1,000,000.00 covering all claims for personal injury and property damage arising out of a single occurrence. The liability coverage shall include protection against liability for non-owned and hired automobiles, and liability of hazards related to usage. In addition, if available, the coverage shall include protection against liability that results from actions related to employment contracts in which the Association is a party. All such policies will name the Association as an insured party under such policy or policies. The original of each policy shall be held by the Board or in the office of the Insurance Trustee (if any).

5. Fidelity Bond Coverage. The Association shall obtain Fidelity Bonds (or insurance) covering officers, directors, employees and other persons who handle or are responsible for handling or disbursing Association funds. The Fidelity Bonds (or insurance) shall meet the following requirements.

a. All such fidelity insurance or bonds shall name the Association as an obligee; and

b. Such fidelity insurance or bonds shall be written in the amount equal to the maximum funds in the custody of the Association or its managing agent at any time or such amount as may be required by Chapter 720, Florida Statutes, as the same may be amended from time to time; and

c. Such fidelity insurance or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or a similar expression; and

d. Such insurance or bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days prior written notice of the servicer or the insured.

6. Flood Insurance. If any part of the Common Areas are in a special flood hazard area, and are insurable as defined by the Federal Emergency Management Agency, the Association shall insure same. The coverage shall be 100% of the current replacement cost of any Common Area improvements or structures and other insurable common property, or the maximum coverage available for such improvements, structures, or property under the National Flood Insurance Program.

7. Workers Compensation. The Association shall obtain and maintain workers compensation insurance if required by law.

8. Directors and Officers. The Association shall obtain and maintain Directors and Officers liability coverage as deemed appropriate by the Board.

9. Other. The Association may obtain and maintain such other insurance as the Board may determine from time to time to be desirable.

10. Insurer. All insurance shall be issued by a company authorized to do business in the State of Florida.

11. Named Insured. For all policies obtained by the Association, the named insured shall be the Association individually and as trustee or agent for the Owners without naming them, and as agent for Institutional Mortgagees who hold Mortgages upon Units covered by the policy whether or not the Institutional Mortgagees are named. The Board may authorize the Insurance Trustee, if any, to maintain the policies and receive any proceeds of such policies.

12. Premiums. Premiums on policies purchased by the Association shall be paid as a Common Expense. However, if the amount of a premium is increased because a Unit or its appurtenances is misused or abandoned, then the Owner of such Unit is liable for the amount of such increase. The Association will furnish evidence of premium payment to each Institutional Mortgagee upon request.

13. Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association as agent, or to such institution in Florida with trust powers as may be designated as Insurance Trustee by the Board. The Board is not obligated or required to designate an Insurance Trustee. The Association or the Trustee shall hold the proceeds for the benefit of the Unit Owners and their mortgages in the following shares:

a. An undivided share for each Unit Owner, that share being the same as such Owners undivided share in the Common Expenses.

b. If a mortgagee endorsement of an insurance policy has been issued as to a Unit, the share of the Owner shall be held in trust for the Mortgagee and such Owner, as their interests may appear; however, no Unit Owner or Mortgagee shall have any right to determine or participate in the determination as to whether or not the Common Area 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 distribution of proceeds made to the Owner and the Mortgagee, as may be determined by the Board.

14. First Mortgagees. This Article is additionally for the benefit of first Mortgagees of Units and may not be amended without the consent of all such

Mortgagees.

15. Policy Cancellation. All insurance policies purchased by the Association shall require the insurer to notify in writing the Association or the designated Insurance Trustee, if any, and each first Mortgagee named in any Mortgage clause at least 10 days before it cancels or substantially changes the coverage.

16. Association as Agent. The Association is irrevocably appointed agent for each Unit owner and for each Mortgagee or other lienor of a Unit, and for each owner of any other interest in the property, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

### **ARTICLE XI: ARCHITECTURAL CONTROL**

1. Architectural Control Committee. The Architectural Control Committee ("ACC") shall consist of an odd number of three (3) or more persons appointed by the Board. In the absence of such appointment, the Board shall act and function as the ACC. The function of the ACC is to ensure that all architectural changes are in compliance with the requirements set forth below. The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction the decisions of the ACC.

2. Community-Wide Standard. The ACC shall regulate, subject to the direction and oversight of the Board, any construction, the external appearance and property improvements in such a manner as to comply with and meet the Community-Wide Standard, to best preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

3. General Provisions.

a. The address of the ACC shall be the principal office of the Association as designated by the Board. Such address shall be the place for the submittal of plans and specifications and the place where the current architectural standards, if any, shall be kept.

b. The ACC may establish time limitations for the completion of any architectural improvements for which approval is required. The Association may establish, from time to time, the requirements for submitted plans and specifications.

c. Plans and specifications are not approved or reviewed by the ACC for (i) engineering design, and by approving such plans and specifications, neither the ACC, the members thereof, the Association, the Members, nor the Board assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications, or (ii) compliance with

any applicable governmental rules and regulations.

d. An application for architectural change shall be made by the applying Owner on forms prepared by the ACC. The completed application together with all plans and specifications as well as any damage and debris deposit fee required by the Association (as determined by the Board) will be submitted to the ACC. The decision of the ACC will be returned to the applying Owner.

4. Failure to Approve. In the event the ACC fails to approve, modify, or disapprove in writing an application within thirty (30) days after complete plans and specifications (including any required damage and debris deposit fee) in writing have been submitted to it, in accordance with its adopted procedures, if any, approval will be deemed granted.

5. Disapproval. In the event plans and specifications submitted to the ACC are disapproved, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the ACC. The Board shall have forty-five (45) days following receipt of the request for appeal to render its written decision. The Board may reverse or modify the ACC decision by a majority vote of the Board. The failure of the Board to render a decision within the forty-five (45) day period shall be deemed decision in favor of the appellant.

6. Conditions.

a. No construction, which term shall include, without limitation, within its definition, staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements of this Article have been fully met, and until the approval of the ACC has been obtained.

b. No construction of improvements (including without limitation, pools, saunas, spas, Jacuzzis, screened enclosures, buildings, mailboxes, dog runs, animal pens, fences, basketball poles and nets, and playground equipment of any kind whatsoever), decorations, attachments, fixtures, alterations, repairs, change of paint or stain color, or other work shall be erected, constructed, affixed, placed, or altered on any Unit until the proposed plans, specifications, exterior colors and/or finishes, landscaping plan, and plot plan showing the proposed location of such improvements shall have been approved by the ACC, its successors or assigns. Refusal of approval plans, locations, or specifications may be based by the ACC upon any reason, including purely aesthetic conditions, which in the sole discretion of the ACC shall be deemed sufficient. Two (2) copies of all plans and specifications shall be furnished to the ACC for its records. No permission or approval shall be required to repaint in accordance with the originally approved color scheme, or to rebuild in accordance with

originally approved plans and specifications. Nothing herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired.

c. No additional plantings shall be permitted on that portion of any Unit, which may be maintained by the Association except as may be approved by the Association.

d. Subject to applicable law, no clothing, laundry, or wash shall be aired or dried on any portion of the Units in an area exposed to view from any other Unit. Drying areas will be permitted only in locations approved by the ACC, and only when protected from view by approved screening or fencing.

e. Unless specifically excepted by the ACC, all improvements, for which an approval of the ACC is required under this Declaration, shall be completed within twelve (12) months from the date of approval of said improvements by the ACC.

f. No construction shall be commenced unless and until a returnable damage and debris deposit of \$500.00 has been posted by the Unit Owner with the Association. The damage and debris deposit shall be used to correct any damage to the Common Areas resulting from the construction activity. If no damage is done to the Common Areas resulting from the construction activity, the damage and debris deposit will be returned to the Unit Owner. The damage and debris deposit may be kept in a non-interest bearing account. Unless otherwise provided by law, any portion of the damage and debris deposit returned to the Owner shall be without interest. The ACC is hereby authorized to require a greater damage and debris deposit where, in the judgment of the ACC, a greater deposit is warranted.

g. No landscaping improvements shall be installed on any Unit without the prior approval of the ACC.

h. No playground equipment including without limitation jungle gyms, swing sets or slides shall be installed on any Unit without the prior approval by the ACC.

7. Variances. The ACC may authorize variances from compliance with any of the provisions of the current architectural standards, if any, when circumstances such as topography, natural obstructions, hardship, 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 be effective unless in writing, unless in compliance with the restrictions set forth in this Declaration, and unless such variance will not estop the Association from denying a variance in other circumstances. For the purposes of this paragraph, 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. Approval of any variance shall not be regarded as approval of any subsequent similar request for a variance, which the ACC may disapprove. The approval of the ACC of any plans or specifications shall not be deemed to be a waiver by the ACC of the right to object to any of the features or elements embodied in such plans or specifications if the same features or elements are embodied in any subsequent plans and specifications submitted for approval.

8. Construction to be in Conformance with Plans. After such plans and specifications and other data submitted have been approved by the ACC, no building, outbuilding, garage, fence, wall, retaining wall, or other improvement or structure of any kind shall be erected, constructed, placed, altered or maintained upon any Unit unless the same shall be erected, constructed or altered in conformity with the plans and specification plans approved by the ACC.

9. Local Building Code. This Article shall not be deemed to excuse any Owner from compliance with local building and construction codes, ordinances and/or regulations, and improvements constructed shall conform to the requirements of such laws, codes, ordinances and regulations, nor shall the ACC's approval create any presumption that Owner's plans comply with the applicable laws, codes, ordinances and regulations, nor that the work will serve its purpose as intended by Owner.

10. Restoration in Event of Damage or Destruction. In the event any improvement on a Lot or Unit is damaged or destroyed, in whole or in part, the Owner shall take action deemed necessary by the ACC to correct any unsightly or dangerous condition resulting from such damage or destruction. The Owner shall take corrective action to either restore or remove the condition. The work shall be completed within six-months after the date of the damage or destruction, which may be extended by the ACC for good cause shown. The Owner shall undertake such corrective action as soon as practicable in order to avoid unsightly or dangerous condition(s). In the event the Owner fails or refuses to take the required corrective action, as deemed appropriate by the ACC, or in the aftermath of a catastrophic event, such as hurricane, the Association shall have the right, but not the obligation, to go upon the Lot and Unit and remove or correct the damaged or destroyed property, which shall be accomplished at the sole cost and expense of the Owner of the property, in which event, the Association shall have the right to place a lien on the Lot and Unit for the full amount of the corrective work, together with attorneys' fees and costs, if any, which lien shall be enforceable in the same manner as other liens created by or under this Declaration.

11. Non-Waiver of Future Approvals. The approval of the ACC 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 the ACC, shall not be deemed to be or constitute approval or waiver of any right to withhold approval as to any similar proposals, plans and specifications or matter subsequently or additionally submitted for approval.

12. Fill and Grade By Owner. No fill shall be added to or removed from any Lot or Unit nor shall the Owner of any Lot or Unit do anything to change or interfere with the drainage of storm water; and no change shall be made with respect to the original grade and contour of swales unless first approved in writing by the Board. The approval of the applicable Water Management District may also be required.

## **ARTICLE XII: USE RESTRICTIONS**

1. Residential Uses. The Property shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Association).

2. Use Restrictions. The Board shall have the authority to make and enforce standards and restrictions governing the use of the Property, in addition to those contained herein, and to impose reasonable user fees for use of the Recreational Facilities. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified by a vote in a regular or special meeting of a majority of the voting interests of all the Members in the Association.

a. Signs. No sign, symbol, name notice, or advertisement of any kind, including but not limited to signs which advertise the sale of a Lot or Unit, shall be posted on any Lot or inscribed or exposed on any window or other part of a Unit or the Common Areas without the prior written approval of the Board. The Board shall have the right to erect any sign as it, in its sole discretion, deems appropriate. Notwithstanding the foregoing, the restrictions of this paragraph shall not apply to any signs displayed for security purposes, provided that such signs are approved as to size, color and location by the Board, at their sole discretion.

b. Parking and Garages. Vehicles shall be parked only in the garages or in the driveways serving the Units or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the reasonable rules and regulations adopted by the Board. Vehicles shall not be parked overnight on Roads or swales. A maximum of two (2) vehicles may be parked overnight in a driveway. All commercial vehicles, recreational vehicles, trailers, campers, camper trailers, boats, watercraft, motorcycles, atvs, and boat trailers must be parked entirely within a garage unless otherwise approved by the Board. No garage shall be used as a living area. No garage shall be altered in such a manner that the number of automobiles which may be parked therein after the alteration is less than the number of automobiles that could have reasonably been parked in the garage as originally constructed.

c. Occupants Bound. All provisions of the Homeowners Documents 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 of any Unit.

d. Animals and Pets. No animals shall be raised, bred, or kept in any Unit, except that dogs, cats, or other household pets may be kept on the Unit, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. Notwithstanding the foregoing, no animal may be kept in the Unit, which in the judgment of the Board results in a nuisance or is obnoxious to the residents in the vicinity. No Owner shall be permitted to maintain in his or her Unit a bull terrier (pit bull) or any pets or animals of mean or of violent temperament or otherwise evidencing such temperament. Pets shall not be permitted in any of the Common Areas unless under leash. Each pet owner shall be required to clean up after his or her pet. Each Owner by acquiring a Unit agrees to indemnify the Association, and hold it harmless against any loss or liability resulting from his or her, his or her family member's or guests, or his or her lessee's ownership of a pet. If a dog or any other animal becomes obnoxious to other Unit Owners by barking or otherwise, the Owner shall remedy the problem, or upon written notice from the Association, he or she will be required to permanently remove the pet from the Property.

e. Nuisance. No Unit Owner shall store or maintain any plant, animal, device, substance, material, property or thing within a Unit, or do any activity or thing, or make any noise or disturbance which (i) causes the Unit to be or appear to be in an unreasonably dirty, untidy or unsanitary condition, (ii) emits an unreasonably foul or obnoxious odor; (iii) is unreasonably obnoxious or offensive to the eye; (iv) creates an unreasonably dangerous condition; or (v) causes an unreasonable interference with any other Owner's or said Owner's invitees', guests' or families' peaceful, quiet and safe use and enjoyment of said Owner's Unit, the Common Areas or any other part of the Property. No illegal activity shall be carried on in any Unit or any other part of Property. Unit Owners and all residents, and their guests and family members, shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other members, residents, guests, occupants, invitees, directors, officers or Association employees, agents, contractors or vendors.

f. Unsightly Conditions. All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Units, and shall not be allowed to accumulate thereon. All refuse containers (except on scheduled trash pick-up days), all machinery and equipment, and other similar items of personal property shall be obscured from view of adjoining streets, Units or Common Areas. All Units shall be kept in a clean and sanitary condition and no rubbish, refuse, or garbage shall be allowed to accumulate, or any fire hazard allowed to exist. In the event an Owner fails to maintain his Unit as required, for a period of at least thirty (30) days, the Association shall have the right, exercisable in its discretion, to clear any rubbish, refuse, or unsightly debris and/or growths from any Unit deemed by the Association to be a health menace,

fire hazard or a detraction from the aesthetic appearance of The Island Club; provided, however, that at least fifteen (15) days prior notice shall be given by the Association to the Owner of such Unit before such work is done by the Association. In the event the Association, after such notice, causes the subject work to be done, then, and in that event, the costs of such work, together with interest thereon at the maximum rate permitted by the usury laws of the State of Florida, shall be charged to the Owner and shall become a lien on the Unit, which lien shall be effective, have priority and be enforced pursuant to the procedures set forth in this Declaration.

g. Antennas. No wires, masts, towers, antennae, aerial, weathervanes, anemometers, or exposed wiring for any purpose or other equipment or structures may be erected, constructed or maintained on the exterior of any home, on the exterior of any Lot or Unit, nor in any of the Common Areas except with the prior written consent of the ACC, and except as the Association may be required to permit under applicable law. The Board of Directors may make and amend rules and regulations with regard to permissible installations under this paragraph.

h. Subdivision of Unit. Units shall not be further subdivided or separated by any Owner, and no portion less than all of any such Unit, nor any easement shall be conveyed or transferred by an Owner; provided, however, that this shall not prevent corrective deeds, deeds to resolve boundary disputes and other similar corrective instruments.

i. Pools and Decks. No pool, spa, hot tub, Jacuzzi or deck shall be installed on any Unit without the prior approval of the ACC. Notwithstanding the foregoing, in no event shall an above ground pool be installed on any Unit.

j. Fences. No fence or similar enclosure shall be installed on any Unit, including around a pool, without the prior written approval of the ACC. Notwithstanding the foregoing, in no event shall any fence or similar enclosure be (i) greater than four (4) feet in height, as measured from top to the bottom of said fence or enclosure, unless otherwise provided by applicable law, (ii) installed in the front yard of any Unit, or (iii) installed on a Unit which is adjacent to a lake or other water body, other than immediately around a pool.

k. Irrigation. No sprinkler or irrigation systems of any type which draw water from lakes, rivers, ponds, canals, wells or other ground or surface waters within the Property shall be installed, constructed or operated by an Owner within the Property, including on individually owned Units, without the prior written approval by the ACC. In addition, no Unit Owner shall interfere with, disturb or destroy the irrigation system or any part thereof which is installed within the Property, including on and under individually owned Units. The entire irrigation system, including but not limited to all irrigation pumps and piping installed on and under individually owned Units, is owned by the Association.

l. 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 rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Septic systems are prohibited on the Property.

m. 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 by the ACC.

n. Plants. The following plants shall not be used within the Property: (i) catlay, (ii) common guava, (iii) loquat, (iv) roseapple and (v) surinam cherry. The Board may identify and by resolution prohibit such other plants as the Board determines from time to time to be undesirable.

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

p. Lighting. Except for seasonal decorative lights, which may be displayed between December 1 and January 10 only, all exterior lights must be approved by the ACC.

q. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Property. Exterior sculpture, fountains, flags, and similar items must be approved by the ACC.

r. Energy Conservation Equipment. All solar heating apparatus must conform to the standards set forth in the HUD Intermediate Minimum Property Standards Supplement, Solar Heating, and domestic Water Systems. Subject to applicable law concerning the installation and/or use of energy saving or conservation devices, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless it is an integral and harmonious part of the architectural design of a structure, as reasonably determined by the ACC. Subject to applicable law concerning the installation and/or use of energy saving or conservation devices, no solar panel, vents, or other roof-mounted, mechanical equipment shall project more than 1.5 feet above the surface of the roof of a Unit; and all such equipment shall be painted consistent with the color scheme of the roof of the Unit. This provision is not intended to prohibit the use of solar energy devices.

s. Lakes and Water Bodies. All lakes, canals, and water bodies ("Water Bodies") within the Property shall be primarily aesthetic amenities and all other uses thereof shall be subject to the Rules and Regulations of the Board.

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 Water Bodies within the Property. Fishing, swimming and boating in the Water Bodies shall be prohibited. No Owner shall construct any dock or other similar structure adjacent to or within the Water Bodies. Notwithstanding the foregoing, certain portions of the Water Bodies may be more environmentally sensitive than others and the Board and the Association, herein reserves the right to further restrict the use of said portions. There shall be no dumping of any kind into the Water Bodies.

t. Recreational Facilities. All recreational facilities and playgrounds furnished by the Association or erected within the Property, if any, shall be used at the risk of the user, and the Association shall not be held liable to any person or persons for any claim, damage, or injury occurring thereon or related to use thereof.

u. Business Use. Under no circumstances may any Unit be used for any business purpose which would cause a level of noise, odor, traffic, debris or other activity inconsistent with residential use.

v. Vehicles. No motorcycles, all-terrain vehicles, dune buggy, tractors, trucks (including pick-up trucks), trailers, boats or other water craft, business or commercial vans, campers, mobile homes, recreational vehicles, motor homes, buses, or similar vehicles shall be parked on any part of the Property, any driveway, lawn, or designated parking space within the Property except: (1) within a garage at all times, (2) commercial vehicles, vans or trucks delivering goods or furnishings services temporarily during daylight hours, and (3) upon such portions of the Property as the Board may allow in their discretion. The restrictions contained in this provision shall in no way prohibit non-commercial passenger vehicles classified as mini vans or sports utility vehicles. In the event there is a dispute or uncertainty concerning the classification or type of a vehicle, then the decision of a majority of the Board shall control. In addition, no vehicle which is inoperable, or not properly licensed or registered, or which is an eyesore (as determined by the Board of Directors in its sole and absolute discretion) shall be permitted to be parked, stored or kept on any part of the Property except in an enclosed garage. The Association shall have the right and authority to authorize the towing away of any vehicle in violation of this restriction and the vehicle owner or violator shall be responsible for and pay all costs and fees, including attorneys' fees, associated with the towing and or storage of the vehicle.

w. Hurricane Protection.

(1). For those Unit Owners who choose to install hurricane protection, the Owners are responsible for installing, maintaining, repainting and replacing hurricane protection installed on any apertures in the walls bounding their

respective Units. The hurricane protective coverings installed shall be consistent with such guidelines and specifications as may be made and amended from time to time by the Board of Directors. The cost of installing, maintaining, repairing, replacing and operating the hurricane protective coverings shall be the responsibility of each Owner. All hurricane protective covering installations must have prior written approval from the Board of Directors, which may be conditioned upon the submission of appropriate plans and specifications evidencing that the proposed installation will conform to the Association's guidelines and specifications.

(2) Each Unit Owner who intends to be absent from his home during the hurricane season (June 1 to November 30 of each year) shall prepare his Unit prior to his departure by doing the following:

(i) Removing all furniture, potted plants, and other movable objects from any portion of the Lot which is not enclosed by a permanent structure; and

(ii) Designating a responsible person or firm to care for his Unit should it suffer hurricane damage. Such person or firm shall also contact the Association for permission to install temporary hurricane shutters, which must be removed when no longer necessary for storm protection. At no time shall hurricane shutters be permanently installed, without the consent of the ACC.

x. Rules and Regulations. The Unit Owners (and their family members, guests, lessees and invitees) shall abide by each and every Rule and Regulation promulgated from time to time by the Board. The Board shall give an Owner in violation of the Rules and Regulations, written notice of the violation by U.S. Certified Mail, return receipt requested, and fifteen (15) days in which to cure the violation. Should the Association be required to seek enforcement of any provision of this Declaration or the Rules, and Regulations and prevail in such action, then the offending Unit Owner (for himself or for his family, guests, invitees, or lessees) shall be liable to the Association for all costs incurred in the enforcement action, including reasonable attorneys' fees, whether incurred in trial or appellate proceedings or otherwise.

### **ARTICLE XIII: MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Property. The provisions of this Article apply to the Homeowners Documents, notwithstanding any other provisions contained therein.

1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "Eligible Holder"), will be entitled to timely written notice of:

a. Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

b. Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Homeowners Documents which is not cured within sixty (60) days;

c. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

d. Any proposed action which would require the consent of a specified percentage of Eligible Holders.

2. Members Approval. Members representing at least 67% of the total Association vote entitled to be cast thereon must consent to any amendment which:

a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this subsection);

b. Change the method of determining the obligations, Assessments, or other charges which may be levied against an Owner of a Unit;

c. By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Units and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall constitute a change, waiver, or abandonment within the meaning of this provision);

d. Fail to maintain insurance, as required by this Declaration; or

e. Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such property.

3. Other Provisions for Mortgagees. To the extent possible under Florida law:

a. Any restoration or repair of the Property after a partial condemnation or damage due to an uninsurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications.

b. Any election to terminate the Association after substantial destruction or substantial taking in condemnation shall require the approval of at least 67% of the Eligible Holders of first Mortgages on Units.

4. Amendments to Homeowners Documents. The following provisions do not apply to amendments to the Homeowners Documents or termination of the Association made as a result of destruction, damage, or condemnation as provided above, or to the addition of land in accordance with this Declaration.

a. Consent to Termination. The consent of Voting Members representing at least 67% of the Members shall be required to terminate the Association.

b. Consent to Amendments. The consent of at least 51% of the Members shall be required to materially amend any provisions of the Declaration, By-Laws or Articles, or to add material provision thereto which establish, provide for, govern, or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens, or subordination of such liens;
- (iii) Insurance or fidelity bonds;
- (iv) Rights to use the Common Areas;
- (v) Responsibility for maintenance and repair of the Property;
- (vi) Expansion or contraction of the Property or the addition, annexation, or withdrawal of Property to or from the Association;
- (vii) Boundaries of any Unit;
- (viii) Leasing of Units;
- (ix) Imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (x) Any provisions included in the Declaration, By-Laws, or Articles which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

5. No Priority. No provision of the Homeowners Documents gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

6. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

7. Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the owners, may cause an amendment to this Article to be recorded to reflect such changes.

8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### **ARTICLE XIV: ENFORCEMENT OF DECLARATION**

The enforcement of this Declaration may be by proceeding at law for damages or in equity to compel compliance with its terms or to prevent violation or breach of any of the covenants or terms herein. The Association, or any Unit Owner may, but shall not be required to, seek enforcement of the Declaration. Any Unit Owner who seeks enforcement of this Declaration shall by his actions be deemed to have indemnified the Association from all liabilities resulting from his actions. Should the party seeking enforcement be the prevailing party in any action, then the person against whom enforcement has been sought shall pay all costs and reasonable attorneys' fees at all trial and appellate levels to the prevailing party. In addition to, and not in lieu of, all other rights and remedies available to the Association, the Association may impose fines and/or suspend the right to use the Common Areas.

#### **ARTICLE XV: AMENDMENTS**

1. Limitation on Amendments. Any amendment which would affect the Water Management System, including the water management portions of the Common Areas or the Environmental Conservation Area, must have the prior approval of the St. Johns River Water Management District. Any amendment which would affect the responsibility for the maintenance and repair of the Common Areas, including the imposition of assessments and assessments liens, must have the prior approval of Indian River County, Florida.

2. Effective Date of Amendments. An amendment to the Declaration shall become effective upon the recordation amongst the public records of the County.

## **ARTICLE XVI: CONVEYANCES**

In order to assure a community of congenial residents and thus protect the value of the Units in The Island Club, the sale or lease of Units shall be subject to the following provisions:

1. Notice to Association. Not less than 30 days prior to: (i) the date of any closing of a sale, or (ii) or the effective date of any lease; the Unit Owner shall notify the Association in writing of his or her intention to sell or lease his or her Unit and furnish with such notification a copy of the contract for purchase and sale or a copy of the lease, whichever is applicable. Except as provided below, it is not the intention of this Article to grant to the Association a right of approval or disapproval of purchasers or lessees. It is, however, the intent of this paragraph to impose an affirmative duty on the Unit Owners to keep the Association fully advised of any changes in occupancy or ownership for the purposes of facilitating the management of the Association's membership records. As this Article is a portion of the Declaration which runs with the land, any transaction which is conducted without compliance with this Article may be voidable by the Association.

2. Lease Agreement Terms. Any and all lease agreements between an Owner and a lessee of such Owner shall be in writing, shall provide for a term of not less than four (4) months, and must provide that the lessee shall be subject in all respects to the terms and provisions of this Declaration and that any failure by the lessee under such lease agreement to comply with such terms and conditions shall be a material default and breach of the lease agreement. The lease agreement shall also state the party who will be responsible for the assessments as stated above, and it shall be the obligation of all Unit Owners to supply the Board with a copy of said written agreement prior to the lessee occupying the premises. Unless provided to the contrary in a lease agreement, a Unit Owner, by leasing his Unit, automatically delegates his right of use and enjoyment of the Common Areas and facilities to his lessee; and in so doing, said Owner relinquishes said rights during the term of the lease agreement. Furthermore, an Owner shall be entitled to lease his Unit a maximum of one (1) time each calendar year.

3. Association Approval. Upon receipt of a copy of the contract for purchase and sale or a copy of the lease, the Association shall within fifteen (15) business days, issue Certificate indicating the Association's approval of the transaction provided the provisions of this Paragraph are complied with. In the event of a sale, it shall then be the responsibility of the purchaser to furnish the Association with a recorded copy of the deed of conveyance indicating the owner's mailing address for all future assessments and other correspondence from the Association. Provided, however, prior to the issuance by the Association of a Certificate indicating the Association's approval of the transaction, the purchaser or lessee shall be required to agree to comply with the Rules

and Regulations of the Association.

4. Delinquent Unit Owners. Notwithstanding the provisions above, in the event that a Unit Owner is delinquent in paying any assessment, or the Owner or his buyer, family, guests, agents, licensees or invitees are not in compliance with any provisions of the Homeowners Documents, the Association has the right to disapprove of any sale; and in the case of a lease, the right to disapprove of and to void any lease at any time prior to or during the leasehold tenancy until any delinquent assessment is paid and/or until any violation of the Homeowners Documents is corrected.

## **ARTICLE XVII: TERMINATION**

1. Consent to Termination. Except as otherwise provided in this Declaration, the consent of at least 67% of the Members shall be required to terminate the Association.

2. Termination and Documents. If this Declaration is terminated in accordance herewith, it is hereby declared that each and every Owner of a Unit by acquiring title to his Unit covenants and agrees, that the termination documents shall require that (i) all Units shall continue to be used solely for residential purposes, and (ii) all Common Areas shall be owned and held in equal shares by the Unit Owners as tenants in common, and each Unit Owner shall remain obligated to pay his pro rata share of expenses to continually maintain the Common Areas.

3. Limitation on Termination. The Unit Owners and their grantees, successors, and assigns by acquiring title to a Unit covenant and agree that no termination of this Declaration shall be made for a period of fifty (50) years from the date of recordation of this Declaration. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the subject property and inure to the benefit of the Association, the Owners, Institutional Mortgagees and their respective legal representatives, heirs, successors, and assigns for said period. After this period, the Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50) year term or any such ten (10) year extension there is recorded amongst the Public Records of the County, an instrument signed by at least 67% of all Mortgagees holding Mortgages encumbering the Units agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of fifty (50) years or the ten (10) year extension thereof during which the termination instrument is recorded.

4. Water Management System. In the event of termination, dissolution or final liquidation of the Association ("Termination"), the responsibility for the operation and maintenance of the Water Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and be approved by the St. Johns River Water Management District prior to such Termination.

5. Common Area Maintenance. In the event of Termination, the responsibility for maintenance and operation of the Common Areas, including Roads, must be transferred to and accepted by an entity which would assume such responsibility, and be approved by the Board of County Commissioners of Indian River County prior to such Termination.

## **ARTICLE XVIII: ENVIRONMENTAL CONSERVATION AREAS**

1. Maintenance of Environmental Conservation Areas. Portions of the Property may be designated and dedicated as Environmental Conservation Areas. All such portions of the Property shall be operated and maintained by the Association pursuant to any plan or agreement approved by the County or other appropriate governmental authority. The Association shall permit representatives of all appropriate governmental agencies to inspect and monitor such portions of the Property upon reasonable notice. The costs of all maintenance expenses on such portions of the Property shall be assessed to the Members as a Common Expense in perpetuity.

2. Prohibited Activities. The following activities shall be prohibited in or on the Environmental Conservation Area:

- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
- c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a governmentally approved maintenance plan;
- d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such 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, and which receive prior governmental approval;
- f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation; or diking; or fencing;
- g. Acts or uses detrimental to such retention of land or water areas.

## **ARTICLE XIX: MISCELLANEOUS**

1. No Waiver. The failure of the Association, or any Owner to object to an Owner's or another person's failure to comply with this Declaration shall in no event be deemed a waiver of any right to object to same and to seek compliance therewith in accordance with the provisions herein.

2. Headings. Article and paragraph captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms and provisions of this Declaration.

3. Pronouns. Whenever the context requires, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns or pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

4. Severability. In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

5. Partition. The Association may not convey, encumber, abandon, partition or subdivide any of the Common Areas without the approval of all Institutional Mortgagees.

ACTIVE: 3388697\_1