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Inst No: 2002007468 Date: 02/26/2002  
GAIL WADSWORTH, FLAGLER Co. Time: 15:40:27  
Book: 804 Page: 1931 Total Pgs: 93

**OFF  
REC 0804 PAGE 1931**

**MASTER DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**HARBOR VILLAGE MARINA**

00071411.WPD.5

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EXHIBIT LIST

- Exhibit A - Articles of Incorporation
- Exhibit B - Bylaws
- Exhibit C - Properties



**MASTER DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
HARBOR VILLAGE MARINA**

**THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HARBOR VILLAGE MARINA** (this "Master Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2002, by **GINN-LA MARINA, LLLP**, a Georgia limited liability limited partnership doing business in the State of Florida as **GINN-LA MARINA LLLP, LTD.**, whose address is 5 Blue Heron Lane, Palm Coast, Florida 32137.

**RECITALS:**

- A. Declarant is the owner of the Properties.
- B. Declarant intends to develop and improve some or all of the Properties as a mixed-use residential and non-residential development with streets, street lights, open spaces, greenbelts, and stormwater drainage and retention areas, and other common areas and improvements for the benefit of the Owners of the Properties.
- C. Declarant desires to provide for the preservation and enhancement of the property values and quality of life in the Properties, the personal and general health, safety and welfare of the Owners, and for the maintenance of streets, street lights, stormwater drainage and retention areas and improvements, open spaces, greenbelts and other common areas and improvements located in the Properties, and, to this end, desires to subject the Properties to this Master Declaration.
- D. In order to provide a means for meeting the purposes and intents herein set forth, Declarant has created a corporation not-for-profit, to which may be conveyed title and delegated and assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and other charges hereinafter created.

**DECLARATIONS:**

**NOW, THEREFORE**, Declarant, for itself and its successors and assigns, declares that, the Properties are and shall be held, improved, used, occupied, leased, transferred, mortgaged, sold and conveyed subject to all of the reservations, covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

## ARTICLE I.

DEFINED TERMS

The following words when used in this Master Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings, unless the context otherwise requires and provided this list of defined terms is not exclusive and there are other defined terms contained in the text of this Master Declaration which shall have the meanings described therein unless the context otherwise requires with respect to such other defined terms:

Section 1. Additional Property or Additional Properties. "Additional Property" or "Additional Properties" shall mean and refer to any real property, together with any improvements thereon, which is made subject to this Master Declaration under the provisions of Article II hereof or is owned by the Declarant or its designated successor whether or not such real property is added to the Declaration.

Section 2. ARB. "ARB" shall mean and refer to the Architectural Review Board of the Association established for architectural control purposes pursuant to Article VII of this Master Declaration.

Section 3. Area of Common Responsibility. "Area of Common Responsibility" shall mean and refer to any services, lands or facilities (other than Common Property and Village Common Property) which are to be provided, operated, maintained and/or improved by or for the Association at Common Expense or Village Common Expense or by the Village Association at Village Common Expense and as the result of (i) specific designation of an Area of Common Responsibility by this Master Declaration, any Supplemental Declaration, or any plat of the Properties; (ii) a contract, agreement, or easement entered into with a third party by the Association, Village Association, or Declarant; (iii) a Declaration executed by the Declarant and naming the Association or Village Association as the maintenance entity; or (iv) a decision of the Board or Declarant. Any of the Areas of Common Responsibility may be delegated by the Association to the CDD, in which event the Association or Village Association payment obligations to the CDD shall constitute a Common Expense.

Section 4. Articles. "Articles" shall mean and refer to the Articles of Incorporation of the Association, a copy of which is attached as Exhibit "A" to this Master Declaration.

Section 5. Association. "Association" shall mean and refer to Harbor Village Marina Property Owner's Association, Inc., a Florida corporation not-for-profit, or its successors and assigns.

Section 6. Board. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 7. Bylaws. "Bylaws" shall mean and refer to the Bylaws of the Association, a copy of which is attached as Exhibit "B" to this Master Declaration.

Section 8. CDD. "CDD" shall mean and refer to the Dunes Community Development District.

Section 9. Common Expense. "Common Expense" shall mean and refer to the liabilities and expenses incurred by the Association in the performance of the duties of the Association, including, without limitation, the costs incurred for operation, maintenance and improvement of the Common Property and the Areas of Common Responsibility, and any reserves established by the Board.

Section 10. Common Property. "Common Property" shall mean and refer to all those lands, together with any improvements located thereon, and all personal property, from time to time devoted to the use and enjoyment of the Members of the Association and owned, operated and maintained by the Association at Common Expense. Common Property includes, without limitation, any platted parcel which is part of the Properties and which is designated by Declarant on any plat or in any other recorded instrument for ownership and maintenance by the Association. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS MASTER DECLARATION, COMMON PROPERTY SHALL NOT INCLUDE ANY PORTION OF THE HAMMOCK BEACH CLUB PROPERTY.**

Section 11. Declarant. "Declarant" shall mean and refer to Ginn La Marina, L.P., a Georgia limited partnership, and its successors and assigns. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights or obligations are specifically set forth in the instrument of succession or assignment, or unless such rights pass by operation of law.

Section 12. Development Order. "Development Order" shall mean and refer to the Hammock Dunes Development of Regional Impact Development Order adopted pursuant to Section 380.06(20), Florida Statutes, as Resolution Number 84-7 of the Board of County Commissioners of Flagler County, Florida, as amended by Amendment to the Development Order adopted as Resolution Number 95-50 of the Board of County Commissioners of Flagler County, Florida, as further amended by Amendment to the Development Order adopted as Resolution Number 98-10 of the Board of County Commissioners of Flagler County, Florida, as amended by Amendment to the Development Order adopted as Resolution Number 98-56 of the Board of County Commissioners of Flagler County, Florida, and as further amended from time to time.

Section 13. Development Plan. "Development Plan" shall mean and refer to the non-binding, general schemes of intended improvement and use of the Properties including any of the lands included in the Plat of Harbor Village Marina, which is recorded in Map Book \_\_\_\_\_,

Page \_\_\_\_\_ of the Flagler County public records, as adopted, amended or approved from time to time by Declarant as to the Properties.

Section 14. Equivalent Unit. "Equivalent Unit" shall mean and refer to each of the following units of measurement for purposes of determining the votes or share of assessments allocable to each Unit:

(a) Each Residential Unit is assigned 1.0 Equivalent Unit, excluding non-condominium apartment units.

(b) Each non-condominium apartment unit is assigned 1.0 Equivalent Unit.

(c) Each Non-residential Unit is assigned Equivalent Units computed as follows: Each 5,000 square feet of floor area of improvements comprising part of each Non-residential Unit (other than any hotel parcel), rounded to the nearest 5,000 square feet, shall be allocated 1.0 Equivalent Unit. If any Non-residential Unit (excluding any hotel parcel) contains less than 5,000 square feet, it shall be allocated 1.0 Equivalent Unit. Each space subject to occupancy as a separate hotel room shall be allocated 1.0 Equivalent Unit. For purposes hereof, "improvements" shall mean and refer to any air-conditioned structure intended for non-residential or hotel use and occupancy for which Flagler County, Florida, has issued a certificate of occupancy or equivalent.

Section 15. Hammock Beach Club Property Owner. "Hammock Beach Club Property Owner" shall mean Northshore Ocean Hammock Investment, L.P., a Georgia limited partnership, or one of its successors, assigns or affiliates located in Flagler County, Florida, doing business as The Club at Hammock Beach, which owns or operates the Hammock Beach Club Property.

Section 16. Hammock Beach Club Property. "Hammock Beach Club Property" shall mean all of the real property located in Flagler County, Florida, owned or leased by the Hammock Beach Club Property Owner, or its successors or assigns, together with all of the recreational and social facilities constructed thereon, if any, which will be operated by the Hammock Beach Club Owner and operated as part of the Club at Hammock Beach and commonly known and referred to herein as The Club at Hammock Beach. **THE HAMMOCK BEACH CLUB PROPERTY IS NOT COMMON PROPERTY OR LIMITED COMMON PROPERTY, NOR IS IT ENCUMBERED BY THIS MASTER DECLARATION UNLESS SUCH PORTION OF THE HAMMOCK BEACH CLUB PROPERTY IS SPECIFICALLY ADDED TO THIS MASTER DECLARATION AS PART OF THE ADDITIONAL PROPERTY.**

Section 17. Limited Common Property. "Limited Common Property" shall mean those lands, together with any improvements located thereon, and all personal property, from time to time designated by the Declarant as being reserved exclusively for the use and enjoyment of all or a designated class of owners.

Section 18. Lot. "Lot" shall mean and refer to each platted parcel of land in the Properties which is subject to separate ownership and intended for use as a site for construction and maintenance of a single family dwelling, whether or not yet improved.

Section 19. Master Declaration. "Master Declaration" shall mean and refer to this Master Declaration of Covenants, Conditions and Restrictions for the Harbor Village Marina, as amended and supplemented from time to time.

Section 20. Member. "Member" shall mean and refer to (i) each Owner who is a member of the Association; and (ii) to each owner who is a member of a Village Association.

Section 21. Non-residential Unit. "Non-residential Unit" shall mean and refer to each portion of the Properties containing commercial, industrial, institutional, resort, recreational or other non-residential or hotel use, whether improved or unimproved, held under one ownership (which may include, without limitation, ownership by co-tenancy, joint tenancy or tenancy-in-common) which is used or is designated on the site plan thereof approved by applicable governmental authorities for use for non-residential or hotel purposes. Non-residential Unit shall include, without limitation, any interest in real property appurtenant to the ownership of the Non-residential Unit and all improvements on the Non-residential Unit. The term may include, by way of illustration and not limitation, resorts and/or recreational facilities, hotels, retail centers, office buildings, conference centers, medical centers, visitor attractions, and other commercial, industrial, institutional, buildings, establishments, facilities and complexes, if any. The term shall not include Common Property, Limited Common Property or property dedicated to the public unless otherwise specified in the deed conveying such property. Each Non-residential Unit shall be exempt from Assessments hereunder until such time as any building improvements comprising part of that Non-residential Unit have been substantially completed, as evidenced by the issuance by applicable governmental authorities of a Certificate of Occupancy or equivalent.

Section 22. Owner. "Owner" shall mean and refer to the record holder, whether one or more persons or entities, of fee simple title to any Unit in the Properties, including, without limitation and Declarant, but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceeding or a conveyance in lieu of foreclosure. For purposes of this Master Declaration, all Owners of timeshare intervals as to each dwelling shall constitute a single Owner. All Owners of each Unit shall be treated for all purposes as a single Owner for that Unit, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Declarant, shall be an Owner for so long as it owns any portion of the Properties.

Section 23. Properties. "Properties" shall mean and refer to all the lands and improvements described in Exhibit "C" attached hereto. The portion of the Properties described on Exhibit "C" attached hereto are also referred to in Article XV as the Single Family Parcel. The Properties shall also include any Additional Properties actually annexed to the operation and effect

of this Master Declaration from time to time under the provisions of Article II of this Master Declaration, if and when any such Additional Properties are annexed, and excluding any lands and improvements withdrawn from this Master Declaration in accordance with the procedures set forth in this Master Declaration.

Section 24. Recreational Amenities. "Recreational Amenities" shall mean and refer to those facilities, services or amenities, if any, such as, but not limited to, clubhouses, swimming pools, docks, parks, gazebos, leisure trails, bike paths and gardens located within the Common Property or Limited Common Property, and designated in writing by Declarant as being reserved exclusively for the use and enjoyment of all or a designated class of Owners. **Recreational Amenities shall not include the facilities or areas located within the Hammock Beach Club Property. The Declarant does not currently anticipate constructing any Recreational Amenities within the Common Property or Limited Common Property for use of the Owners.**

Section 25. Residential Unit. "Residential Unit" shall mean and refer to each separately described portion of the Properties, whether attached or detached and each non-condominium residential apartment unit, which is intended to be occupied as a single family residence or household, including, without limitation, each Lot (together with the residence, if any, constructed thereon), non-condominium residential apartment unit, cooperative unit, condominium unit, zero lot line dwelling, patio home, townhouse, cluster home, and any other form of residential occupancy or ownership now existing or hereafter created. In the case of a structure which contains multiple dwelling units, each dwelling shall be deemed a separate Residential Unit. In the case of a building containing timeshare units, each separate dwelling therein shall be deemed a separate Residential Unit for purposes of assessments (although not liens for same, which shall attach to the underlying land and improvements as a whole). All assessments for timeshare units shall be based on one unit per dwelling (not one per interval), and the condominium association with jurisdiction over such unit shall be responsible for collecting all assessments and contributing same to the Association. For voting purposes, each timeshare unit shall be designated one vote per dwelling (not one vote per interval unit), and to the extent permitted by law, all voting of timeshare units shall be done by the condominium association or other designated timeshare unit owners association, as the voting representative for all timeshare owners. Residential Unit shall include in its meaning any interest in real property appurtenant to the ownership of the Residential Unit. Each Residential Unit shall be exempt from assessments hereunder until such time as a plat creating a subdivision or a declaration of condominium describing a condominium regime for that Residential Unit is recorded in the public records of Flagler County, Florida.

Section 26. Supplemental Declaration. "Supplemental Declaration" shall mean and refer to any declaration of covenants, conditions, and restrictions executed by Declarant, and by the owner of the affected lands if same are not owned by Declarant, which extends the provisions of this Master Declaration to Additional Property.

Section 27. Surface Water Management System. "Surface Water Management System" shall mean and refer to all land, easements and other facilities and appurtenances which together constitute and comprise the master surface water and stormwater management and drainage system with respect to the land shown on the plans therefor approved by Flagler County, Florida, and the St. John's River Water Management District (as same may be modified and amended from time to time).

Section 28. Unit. "Unit" shall mean and refer to either a Residential Unit or a Non-residential Unit. A Unit shall be created upon the earlier to occur of (i) recordation of the subdivision plat or a condominium declaration therefor; or (ii) approval of the site plan therefor by the governmental authority having jurisdiction thereof, as the case may be, and whether or not the improvements to be constructed thereon are complete, subject to the limitations or the commencement of assessments with respect to Non-residential Units described in Section 21 above.

Section 29. Village. "Village" shall mean and refer to each separate area of the Properties specifically designated by this Master Declaration or any Supplemental Declaration as having separate Village status. For example, and by way of illustration and not limitation, a condominium complex, townhouse development, cluster home development or single-family detached housing development or any group of such developments, may, upon Declarant filing a Supplemental Declaration therefor which designates it as a Village, constitute a separate Village. Any Village may be subjected to additional covenants, conditions, restrictions, assessments and easements not otherwise applicable to Owners outside of such Village. The Declarant has designated the Single Family Parcel described in Article XV as a Village known as the Single Family Parcel Village.

Section 30. Village Assessments. "Village Assessments" shall mean and refer to assessments from time to time levied by the Association or any Village Association for Village Common Expense when authorized by this Master Declaration, any Supplemental Declaration, or by the Board of Directors of the Association or of any Village Association. Village Assessments shall be assessed only against the Owners of Units in the Village for which the particular Village Common Expense is to be incurred. Village Assessments shall be levied uniformly in the affected Village according to each type of Unit.

Section 31. Village Association. "Village Association" shall mean and refer to any corporation not-for-profit, condominium or cooperative association, or other incorporated or unincorporated entity of limited jurisdiction established pursuant to Section 19 of Article IV of this Master Declaration in connection with the development of any Village for the purpose of owning, operating and maintaining Village Common Properties or attending to affairs and levying Village Assessments unique to such Village and the Units located therein.

Section 32. Village Common Expense. "Village Common Expense" shall mean and refer to costs incurred by the Association or any Village Association for services rendered or expenses incurred which are not of general benefit but rather primarily for the benefit of and intended to be

borne by the Owners of Units within a particular Village. Expenses incurred for the ownership, operation, maintenance and improvement of Village Common Property shall be Village Common Expense and reimbursed to the applicable Association or Village Association through Village Assessments. Areas of Common Responsibility may be designated as Village Common Expense with respect to the Properties as provided in Section 3 of this Article I.

Section 33. Village Common Property. "Village Common Property" shall mean and refer to those lands and any improvements thereon, and any personal property, which may be designated by Declarant as Village Common Property on any recorded plat of the Properties or in any Supplemental Declaration or other recorded instrument, which are devoted primarily to the common use and enjoyment of the Owners of Units within a particular Village in the Properties. The costs of operation, maintenance and improvement of Village Common Property shall be a Village Common Expense and shall be borne solely by the Owners entitled to the use and enjoyment thereof. Village Common Property in the Properties may be conveyed by Declarant to the Association or to any Village Association for the purpose of operation, management, maintenance and improvement. **VILLAGE COMMON PROPERTY SHALL NOT INCLUDE ANY PORTION OF THE HAMMOCK BEACH CLUB PROPERTY.**

## ARTICLE II.

### PROPERTY SUBJECT TO THIS MASTER DECLARATION AND ADDITIONAL PROPERTY

Section 1. Property Subject to Master Declaration. All of the Properties are, and shall be, subject to the encumbrance, operation and effect of this Master Declaration. Upon and after annexation of each Additional Property, the Additional Property so annexed shall be held, improved, used, occupied, mortgaged, leased, transferred, sold and conveyed, subject to the reservations, covenants, conditions, restrictions, easements, charges and liens set forth in this Master Declaration, as amended, and the applicable Supplemental Declaration.

Section 2. Additional Property. Declarant (joined by the owner of the lands if other than Declarant) shall have the sole right, but not the obligation, to bring within the encumbrance of this Master Declaration, as Additional Property, additional lands and improvements. In addition, Declarant reserves the right, but shall not be obligated, to annex any other lands in the general vicinity of the Development Plan. Annexation may be accomplished without the consent of the Association, the Members, the Owners, the occupants of the Properties, or any mortgage or lien holder.

Section 3. Method of Annexation. The additions authorized under this Article shall be made by filing of record a Supplemental Declaration with respect to the Additional Property which shall extend the operation and effect of this Master Declaration to such Additional Property. The



Supplemental Declaration shall describe the real property to be annexed and shall state that it is being made pursuant to the terms of this Master Declaration for the purpose of annexing property to the scheme of this Master Declaration and extending the jurisdiction of the Association to the Additional Property. The Supplemental Declaration may contain such terms and provisions not inconsistent with this Master Declaration as may be desirable to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics, non-residential uses, or development approaches being implemented, all of which may be significantly at variance with earlier phases of the Properties. The Supplemental Declaration shall be executed by the Declarant and shall contain the joinder of the owner of the Additional Property, if other than the Declarant. Owners, upon recordation of any Supplemental Declaration, shall also have a right and non-exclusive easement of use and enjoyment in and to the Common Property within the real property so annexed and an obligation to contribute to the cost of management, operation and maintenance of such Common Property within the annexed lands. Any Supplemental Declaration recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after recordation of any Supplemental Declaration, the Additional Property described therein shall be subject to the provisions of this Master Declaration and to the jurisdiction of the Association. As to any Additional Property brought within the operation and effect of this Master Declaration, the owner thereof or Declarant may also subject such Additional Property to a declaration of condominium or other covenants and restrictions not inconsistent with this Master Declaration. Declarant may, with respect to such Additional Property, also create a separate Village Association for the purpose of owning, operating, governing, maintaining, or improving Village Common Property, within the Additional Property and performing the functions and fulfilling the obligations of a Village Association. In the event a Village Association is created with respect to any Additional Property, the Owners in the Additional Property subject to the Village Association, shall be Members of both the Association and the Village Association.

Section 4. Non-Binding General Plan of Development.

(a) Purpose. The Development Plan is the dynamic design for the development of the lands included within the Development Plan, which design may be modified and amended from time to time during the course of development and sale of those lands. The Development Plan shall not bind Declarant to make the additions to the Properties which are shown on the Development Plan or to improve any portion of such real estate in accordance therewith. Nothing herein shall be interpreted as requiring annexation of any of said lands or any other lands owned by Declarant or, if annexed, that they be annexed in any particular sequence or configuration or that they be annexed in whole tracts. Nothing in this Master Declaration or in any Supplemental Declaration shall be construed to affect or encumber any portion of the lands in the Development Plan or any other lands owned by Declarant prior to annexation.

(b) Amendments. Declarant hereby reserves the right to amend the Development Plan in response to changes in market, technological, economic, environmental, demographic, social

or other conditions affecting the development or marketing of the Properties and in response to changes in the requirements of government agencies or financial institutions.

(c) Interpretation. Nothing contained in this Master Declaration, any amendment to this Master Declaration, any Supplemental Declaration or the Development Plan shall be interpreted to:

(i) Require Declarant or any other person or entity to annex any real property to the operation and effect of this Master Declaration; or

(ii) Prevent any property not annexed to the Properties from being subjected to another, independent declaration or scheme of development, even though such property may be encompassed by the Development Plan.

The community contemplated by this Master Declaration, including parcels of land subject to potential annexation, includes a variety of development types, values and uses.

Section 5. Merger or Consolidation. Upon a merger or consolidation of the Association or any Village Association with another association, the properties, rights and obligations of each Association may, by operation of law, be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger or consolidation. The Declarant acting alone shall have the power to merge Village Associations. The surviving or consolidated association may administer the covenants and restrictions established by this Master Declaration and any Supplemental Declaration within the Properties, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Master Declaration or any Supplemental Declaration within the Properties.

### ARTICLE III.

#### STRUCTURE, POWERS AND DUTIES OF, AND MEMBERSHIP AND VOTING RIGHTS IN, THE ASSOCIATION

Section 1. Association. The Association shall be a corporation not-for-profit charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Master Declaration. The Members of the Association shall have the voting and other rights as provided in the Articles, the Bylaws and this Master Declaration. The Articles and Bylaws are subject to amendment in accordance with their respective provisions and it shall not be necessary to amend this Master Declaration in order to amend the Articles or the Bylaws; provided, however,

neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Master Declaration. In the event of any such inconsistency, the provisions of this Master Declaration shall prevail.

ARTICLE IV.

PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. Title to Common Property and Village Common Property. Declarant may retain the legal title to all or any portion or portions of the Common Property and/or Village Common Property until such time as it has completed improvements thereon and until such time as, in the opinion of Declarant, the Association is able to maintain the same. Declarant may convey or turn over certain items of the Common Property and/or Village Common Property to the Association (or any Village Association) and retain others. In consideration of the benefits accruing to the Association and to the Owners under this Master Declaration and in consideration of the covenants and agreements of the Declarant hereunder, the Association hereby agrees to accept title to any Common Property and/or Village Common Property or to any interest in Common Property and/or Village Common Property now or hereafter conveyed to it pursuant to the terms and conditions of this Master Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance to the Association in the public records of Flagler County, Florida, title or such other interest in Common Property and/or Village Common Property conveyed shall vest in and to the Association (or any Village Association, if applicable) without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Association (or the Village Association, if applicable). Property interests transferred to the Association (or any Village Association) by Declarant may include, but are not limited to, fee simple title, easements, leasehold interests and licenses to use. Any fee simple interest in property transferred to the Association (or any Village Association) by Declarant shall be transferred to the Association by quit claim deed, subject to the terms of this Master Declaration, and subject to any and all easements, rights-of-way, reservations, covenants, conditions, restrictions, equitable servitudes and other encumbrances of record or reserved by Declarant in the instrument of conveyance, including but not limited to any access easements reserved by the Declarant or the right to connect any of the streets within the Properties. The instrument by which Declarant conveys any property or interest in property to the Association (or any Village Association) may impose special restrictions governing the uses of such property and special obligations on the Association (or any Village Association) with respect to the maintenance of such property.

The Association (or any Village Association, if applicable) shall accept "as is" the conveyance of Common Property and/or Village Common Property without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements and repairs to be completed after the conveyance, including, without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and without any representations or warranties regarding future repairs or regarding the condition,

construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion or the future economic performance or operation of, or the materials or furniture which has been or will be used in such property or repairs, except as set forth herein.

In order to preserve and enhance the property values and amenities of the Properties, the Common Property and/or Village Common Property and all landscaping, drainage and other improvements now or hereafter built or installed thereon shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards.

Section 2. Owner's Easements of Enjoyment. Subject to the provisions of this Master Declaration, the Association, Declarant (until Declarant transfers ownership of the last Unit in the Development Plan owned by Declarant) and every Owner shall have a non-exclusive right, license, privilege and easement of use and enjoyment in and to the Common Property, and such rights shall be appurtenant to and shall pass with the title to every Unit in the Properties. Said rights shall include, but not be limited to, the following:

(a) Right-of-way for ingress and egress by vehicles or on foot, in, through, over, under and across the streets, roads and walks in the Common Property for all lawful purposes; and

(b) Rights and easements of drainage across stormwater drainage and retention structures and areas, and to connect with, maintain and make use of utility lines, wires, pipes, conduits and cable television lines which may from time to time be in or along the streets and roads or other areas of Common Property; and

(c) Rights to use and enjoy the Common Property for any purpose not inconsistent with this Master Declaration, any applicable Supplemental Declaration, the Bylaws and rules and regulations of the Association, or governmental regulations.

Section 3. Extent of Owner's Easements. The rights and non-exclusive easements of use and enjoyment created hereby shall be subject to the following:

(a) The Association, subject to the rights of Declarant and the Owners set forth in this Master Declaration, shall be responsible for the exclusive management and control of the Common Property and all improvements thereon;

(b) The easements and rights of Declarant reserved by this Master Declaration;

(c) The right of the Association to borrow money (i) for the purpose of improving the Common Property or any Area of Common Responsibility; (ii) for acquiring additional Common Property; (iii) for constructing, repairing, maintaining or improving any facilities located within the Common Property or any Area of Common Responsibility; or (iv) for providing the services authorized herein, and to give as security for the payment of any such loan a mortgage or other

security instrument conveying all or any portion of the Common Property; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interest, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given;

(d) The rights and easements specifically reserved in this Master Declaration for the benefit of the Association or any Village Association;

(e) The rights and easements reserved in this Master Declaration for the benefit of the Hammock Beach Club Property; and

(f) Any other rights, encumbrances or easements affecting the easements of use and enjoyment provided for herein.

Section 4. Location of Common Property Not Controlling as to Use. Designation by Declarant of Property as Common Property located within various portions of the Properties (as opposed to Village Common Property which is intended to be restricted as to user identity) shall result in general use and enjoyment by Association Members regardless of the tract or phase in which the Common Property is located.

Section 5. Easement Reserved to Declarant Over Common Property and Village Common Property. Declarant, hereby reserves to itself and its successors and assigns, for the benefit of any portion of the Properties or Additional Properties owned by Declarant or its specifically designated successor, such licenses, rights, privileges and easements in, through, over, upon and under all Common Property and/or Village Common Property, including, but not limited to: (i) the right to use the said Properties for rights-of-way and easements to erect, install, maintain, inspect and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes, telephone and electrical equipment, gas, cable television, drainage facilities, ditches or lines, or other utilities or services and for any services necessary or convenient for the completion, marketing, use and enjoyment of the Properties; (ii) the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance; (iii) the right to locate thereon wells, pumping stations and irrigation systems and lines; (iv) the right and easement of ingress and egress for purposes of development, construction and marketing; (v) the right and easement to install, maintain, repair and replace improvements to or upon the Common Property and/or Village Common Property; and (vi) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of the Development Plan; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such utility, development, improvement or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable television, sewers and drainage and other utility lines which may

from time to time be in or along the streets and roads, or within the Common Property and/or Village Common Property, easements, or greenbelts. Declarant, the Association and their respective agents, employees, contractors, licensees, successors, and assigns may carry on such activities as may be reasonably required, convenient, or incidental to the construction, completion, improvement, maintenance, repair, operation and sale of the whole or any portion of the Properties, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model dwellings. The right of Declarant, or its designees, successors, and assigns, to maintain and carry on such facilities and activities shall include, without limitation, the right to use dwellings as model residences, and to use any dwellings as an office for the sale of Units for related and unrelated activities. Finally, Declarant reserves the right to use the Common Property and/or Village Common Property in its efforts to market the Properties. The easements and rights-of-way herein reserved shall continue in existence in favor of Declarant after conveyance of Common Property to the Association (or Village Association) until such time as Declarant has sold all lands in the Development Plan. If a building or other improvement has been or is proposed to be erected within the Properties in such a manner as to constitute a violation of, variance from, or encroachment into, the covenants and restrictions set forth in, or easements granted or reserved by this Master Declaration, the Declarant shall have the right to waive or release the violation, variance or encroachment without the consent or joinder of any person so long as the Declarant, in the exercise of its sole discretion, determines in good faith that such waiver or release will not materially and adversely affect the health and safety of Owners, the value of adjacent portions of the Properties, and the overall appearance of the Properties. This Section may not be amended without the written consent of Declarant.

Notwithstanding any provision of this Master Declaration to the contrary, the Declarant shall have the right to specifically define or amend the boundaries or extent of any easement, license or use right reserved or granted pursuant to the terms hereof. At any time, the Declarant shall have the right to execute and record an instrument which shall specifically define or amend the boundary and extent of any such easement, license or use rights, or the Declarant may specifically define or amend such boundaries by the designation thereof on one or more recorded plats of portions of the Properties. The Declarant's determination pursuant to this Master Declaration in accordance with this Article IV shall be dispositive for all purposes; provided nothing contained in this Section 5 shall authorize the Declarant to take any action that would have a material and adverse affect on any improved portion of the Properties.

Section 6. Beneficiaries. The easements, licenses, rights and privileges established, created, granted, or reserved by this Master Declaration shall be for the benefit of the Association, Declarant, the Additional Properties, the Properties, and the Owners, all as more specifically set forth elsewhere in this Master Declaration; and any Owner or Declarant may also grant the benefit of such easement, license, right or privilege to tenants and guests for the duration of their tenancies or visits, but the same are not intended nor shall they be construed as creating any rights in or for the benefit of the general public.

Section 7. Easement for Encroachments. In the event that any portion of any roadway, walkway, parking area, driveway, water lines, sewer lines, utility lines, sprinkler system, building or any other structure or improvement as originally constructed encroaches within any applicable building set back lines on any adjoining Unit or Common Property, it shall be deemed that the Owner of such Unit or the Declarant or the Association, as the case may be, has granted a perpetual easement to the Owner of the adjoining Unit, the Declarant, the Association or the Hammock Beach Club Property Owner, as the case may be, for the continued maintenance and use of such encroaching improvement or structure. The foregoing shall also apply to any replacements of any such improvements or structures if same are constructed in substantial conformity with the original structure or improvement.

Section 8. Access, Ingress and Egress: Roadways. All Owners, by accepting title to property conveyed subject to this Master Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress shall be limited to roads, sidewalks, walkways, trails, and waterways located within the Properties from time to time, provided that pedestrian and vehicular access to and from all Units and the Properties shall be provided at all times. There is reserved unto Declarant, the Association and their respective successors and assigns, the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Properties.

Section 9. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, employees, contractors, managers, and licensees, and the ARB, to enter upon any Unit in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner directly affected thereby. Whenever the Association, Declarant, the ARB and their respective successors, assigns, agents, or employees are permitted by this Master Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Properties, the entering thereon and the taking of such action shall not be deemed to be trespass.

Section 10. Future Easements and Modifications. Declarant reserves the right to impose future restrictions and to grant or dedicate additional easements and rights-of-way on any portion of the Properties owned by Declarant. In addition, Declarant hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Property and Village Common Property to any person or entity, so long as Declarant shall own any portion of the Properties at the time of the Declarant's granting of such easements and rights-of-way.

Section 11. Maintenance Easement. There is hereby reserved for the benefit of Declarant, the Association and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon the Properties for the purpose of providing insect, reptile and pest control, mowing, removing, clearing, cutting or pruning

underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Properties, provided that such easements shall not impose any duty or obligation upon Declarant or the Association to perform any such actions, or to provide garbage or trash removal services. Furthermore, it is hereby reserved for the benefit of Declarant, the Association, the CDD and their respective agents, employees, successors and assigns, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of the Properties (together with the right to enter upon unimproved portions of the Properties as are necessary to obtain access to such areas) for the purpose of (a) mowing such area and keeping the same clear and free from unsightly growth and trash, (b) maintaining any bodies of water located within the Properties, including, but not limited, lakes, ponds, waterways, canals, lagoons, and harbors, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards, and (c) installing, constructing, repairing, replacing, and maintaining those docks, bulkheads, or other structures which are Common Property, Village Common Property, or Areas of Common Responsibility.

Section 12. Drainage Easements. There is hereby reserved for the benefit of Declarant, the Association and all other Owners, and their respective successors and assigns, a non-exclusive easement for stormwater collection, retention, detention and drainage over, upon and within the rights-of-way of all streets and roads, the Surface Water Management System and all other drainage easements shown on each plat or otherwise reserved, declared or created pursuant to this Master Declaration. There is further hereby reserved for Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Properties for the purposes of constructing, installing, inspecting, maintaining, repairing and replacing the Surface Water Management System and all appurtenant improvements and facilities. Additionally, Declarant, for the benefit of itself, the Association and all Owners hereby reserves easements over any and all other portions of the Common Property as may be reasonably required from time to time in order to provide stormwater drainage to all or any portions of the Properties; provided, however, that any such additional drainage easements shall not unreasonably interfere with the use and enjoyment by any Owners, the Common Property affected thereby, or any improvements from time to time located on any portion of the Common Property.

Section 13. Wells and Effluent. There is hereby reserved for the benefit of Declarant, the Association, and their respective affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement: (a) to pump water from lakes, canals, lagoons, ponds, and other bodies of water located within the Properties for the purpose of irrigating any portions of the Properties, (b) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and sewer treatment facilities and systems within the Common Property, or (c) to spray or locate any treated sewage effluent within the Common Property or upon any Unit or upon unimproved portions of any other property subject to this Master Declaration.



Section 14. Roadways Within Development. It is the present intent of Declarant that all streets in the Properties will remain private. However, Declarant reserves the right, but not the obligation to dedicate or otherwise convey any portion of the roadways within the Properties not otherwise denominated to be Common Property to the State of Florida, any political subdivision thereof, any special taxing district or a community development district or other local unit of special government purpose established pursuant to Florida Statutes, for the purpose of granting public access thereto and over said roadways. In the event of dedication or conveyance of any roadway, Declarant may, in its sole discretion, reserve an easement over any such roadway to be primarily maintained by such public body for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights-of-way thereof; and thereafter designate in a plat or Supplemental Declaration that said easement shall constitute an Area of Common Responsibility to be maintained by the Association. Nothing contained herein shall be construed to create any public rights in private roads and streets within the Properties, if any, until such time as such roads are expressly dedicated or conveyed to and formally accepted by the State of Florida or political subdivision thereof. Unless otherwise determined by Declarant, all of the private roadways in all of the Properties shall be maintained by the Association as part of the Common Expense.

Section 15. Changes in Boundaries and Withdrawal of Property from Common Property and Village Common Property. For so long as the Declarant shall own any of the Properties, the Declarant may at any time change and realign the boundaries of the Common Property and/or Village Common Property with any Units within the Properties or withdraw, or cause to withdraw, land from the Common Property and/or Village Common Property in the Declarant's sole discretion. The prior sentence notwithstanding, in the event such change and realignment of the boundaries Common Property and/or Village Common Property or withdrawal of Common Property and/or Village Common Property shall materially and adversely affect any Unit or materially and adversely affect access, visibility or drainage to or from any Unit, the Declarant shall not have the right to change or realign the boundaries of the Common Property and/or Village Common Property or withdraw such Common Property and/or Village Common Property without the consent and joinder of the Owner of the Unit which is so affected. Change and realignment of the boundaries of the Common Property and/or Village Common Property or withdrawal of land from the Common Property and/or Village Common Property shall be evidenced by recorded in a Supplementary Declaration in the public records of Flagler County, Florida, which shall specifically reference such change, realignment, addition or withdrawal. Withdrawal of land from the Common Property and/or Village Common Property by the Declarant shall terminate any and all easements and rights of use of the Owners in such land. No land owned by the Declarant shall be deemed to be Common Property and/or Village Common Property, unless such land is expressly designated as such by the Declarant pursuant to Article I, Sections 10 or 33, hereof, or subsequently designated as such by the Developer pursuant to this Article I, Sections 10 or 33 or if conveyed to the Association or Village Association, pursuant to this Article IV, Section 1, even if the Declarant consents or acquiesces to the use of such land by the Owners. In the event any land, easements, use rights or personal property owned by the

Association shall be withdrawn from the Common Property and/or Village Common Property pursuant to this Article IV, Section 15, upon the Declarant's written request, the Association or Village Association shall promptly execute and deliver to the Declarant any and all deeds, bills of sale, assignments or other conveyance documents as may be necessary or appropriate to effectuate the withdrawal of such Common Property and/or Village Common Property.

Section 16. Enforcement. 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 Master Declaration (including, without limitation, Articles IV, VIII, IX, and X), which relate to the maintenance, operation and repair of the Surface Water Management System.

Section 17. Title to Village Common Properties. Subject to the terms of this Master Declaration and any Supplemental Declaration and the easements reserved or granted pursuant thereto, the title to any Village Common Property shall be conveyed to the Association, or to such Village Association as may be established pursuant to Section 19 of this Article IV, for the purpose of owning, operating, and maintaining the said Village Common Properties. Except as provided in Section 18 below, the conveyance of Village Common Property to the Association or to any Village Association shall be subject to the same reservations, rights, easements, limitations, and obligations as are reserved and imposed by this Article IV with respect to Common Property.

Section 18. Extent of Member's Easements. Each Owner of a Unit included in any Additional Property designated pursuant to this Master Declaration or in any Supplemental Declaration as containing Village Common Property for the exclusive benefit of the Owners in that Additional Property shall have a right and non-exclusive easement of use and enjoyment of in and to the Village Common Property which right shall be appurtenant to the ownership of such Unit. Notwithstanding anything to the contrary in this Master Declaration, a person or entity, other than Declarant, who is not an Owner of a Unit encompassed within a particular Additional Property containing Village Common Property shall have no property right or rights of use or enjoyment in and to said Village Common Property, and membership in the Association shall not be construed as vesting in any Member, any property or user right in and to the Village Common Property unless said Member is also the Owner of a Unit encompassed within the said Additional Property.

Subject to the rights and easements hereinafter described, Owners of Units encompassed within any Additional Property containing Village Common Property shall have such non-exclusive right, license, privilege and easements of use, enjoyment, drainage, ingress and egress, and utilities in and to the Village Common Property appurtenant to and passing with the title of such Units as shall be equivalent to the right, license, privilege and easements of the Members of the Association in and to the Common Property as such rights are specifically set forth in this Article IV.

The Association (as to Village Common Property owned by it) and the Declarant shall have the same powers, duties and rights as to the said Village Common Properties as are granted to the Association as to Common Properties, as are set forth with regard to Common Property in this

Article IV, and the rights and easements granted to Owners of lands in the Properties or any Additional Property containing Village Common Property in and to such property shall be subject to those said rights, power and duties, including, but not limited to the Declarant's reserved easements described in this Article IV over the Common Property and Village Common Property.

Section 19. Village Association. If desired by Declarant, in order to provide for the ownership, maintenance and operation of any Village Common Property and improvements therein, or in order to provide for the independent management, maintenance and operation of lands and improvements declared to be subject to the jurisdiction of such Village Association, Declarant may, but is not obligated, to cause one or more Village Associations to be created with the same rights and powers with respect to the Village Common Property and the Villages within their jurisdiction (including, without limitation, the right and power to levy assessments) as are provided to the Association as to Common Property and any Village Common Property owned by it. Such Village Association may be created by any Supplemental Declaration or declaration of condominium for the affected Village filed solely by Declarant, without the consent and joinder of any other party, and requirements of membership therein and the obligations of the members thereof shall be set forth in the Supplemental Declaration or declaration of condominium and in the articles of incorporation and bylaws of the Village Association; and the assessments to be levied by the Village Association shall be in addition to the assessments levied by the Association.

#### ARTICLE V.

#### INSURANCE AND CASUALTY LOSSES

The Association's Board of Directors shall have the authority to obtain insurance for insurable improvements on the Common Property and/or Village Common Property owned by it, and on any Area of Common Responsibility, against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, and to obtain public liability policies covering the Association and its Members or agents for damage or injury caused by the negligence of the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members or agents, and, if obtainable, directors' and officers' liability insurance, and to obtain any and all other types of insurance coverages with respect to such risks or persons as shall be deemed necessary or appropriate by the Board. Any insurance obtained shall include such coverages, contain such deductibles provisions, and be in such limits as shall be determined by the Board. The Association shall also have the discretion to self-insure against any risk. Premiums for insurance shall be a Common Expense if for the benefit of the Association, its officers or directors, the entire membership or Owners as a group, or relates to the Common Property, Village Common Property, or the Areas of Common Responsibility.

All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee for the respective benefitted parties. Exclusive authority to adjust losses under policies in force on the Common Property and/or Village Common Property and obtained by

the Association shall be vested in the Association's Board; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Premiums for insurance shall be the Village Common Expense of Owners within any Village if the insurance is for the primary benefit of that (i) Village, (ii) the owners of lands located within said Village, or (iii) any Village Common Property located therein.

It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, title, and other insurance with respect to his or its own property. In the event of damage or destruction by fire or other casualty to any property subject to this Master Declaration, or the improvements thereon, and in the further event that the Owner responsible for the repair and replacement of such property elects not to repair or rebuild, such Owner shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such property in a clean, orderly, safe, and presentable condition. Should such Owner elect to repair or rebuild such property or other improvements thereon, such Owner shall repair or rebuild in accordance with the standard to which the improvements were originally constructed and in accordance with all applicable standards, restrictions, and provisions of this Master Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work or repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion in accordance with the applicable provisions of Article IX, Section 18.

## ARTICLE VI.

### COVENANT FOR ASSESSMENTS

#### Section 1. General.

(a) Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed to any Unit included in the Properties, whether or not it shall be so expressed in any such deed or other conveyance, and each purchaser at a judicial sale, shall be deemed to and does covenant and agree to pay to the Association: (i) annual assessments, (ii) special assessments, and (iii) individual assessments. Said assessments shall be fixed, established and assessed to the Owners as hereinafter provided. The assessments, together with interest thereon, late charges and costs of collection thereof, including court costs and reasonable attorneys' fees, shall be an equitable charge and a continuing lien upon the Unit against which each such assessment is made from the date on which each assessment is due. Each such assessment, together with interest, late charges, costs and attorneys' fees, as herein provided, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due, and his grantee shall take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor. In the event of co-ownership of any Unit subject to this Master Declaration, all of such co-Owners shall be jointly and severally liable for the entire amount due.

(b) Exempt Property. The following property now or hereafter subject to this Master Declaration shall be exempt from the assessments, charges and liens created herein:

(i) All existing and proposed Common Property and Village Common Property; and

(ii) Any Units owned by Declarant during the time Declarant subsidizes its share of budget deficits in accordance with Section 10 below.

Except as set forth in this subsection, no Units in the Properties shall be exempt from assessments, charges or liens. No Owner may avoid the obligation for payment of assessments by virtue of non-use or abandonment of the Common Property or any Village Common Property.

Section 2. Purpose of Assessments. The assessments levied by the Association may be used for the purpose of promoting the recreation, health, safety, and welfare of the lands and Owners in the Properties, for the performance by the Association of its duties and the exercise of the powers conferred upon it, for the improvement and maintenance of properties, services and facilities which have been or will be constructed, installed or furnished upon, and which are devoted to the purpose and related to the use and enjoyment of, the Common Property, Village Common Property, the Areas of Common Responsibility, and for such other purpose as may be deemed desirable or appropriate from time to time by the Board, including but not limited to:

(a) Payment of operating expenses of the Association;

(b) Lighting, improvement and beautification of access ways and easement areas, and the acquisition, maintenance, repair and replacement of project identification signs, directional markers and traffic control devices, and the costs of controlling and regulating traffic on the access ways;

(c) To pay all real and personal property taxes and assessments, if any, separately levied upon or assessed against the Association, the Common Property, and any Village Common Property. Such taxes and assessments may be contested or comprised by the Association. It is the intent of this Master Declaration that, inasmuch as the interest of each Owner to use and enjoy the Common Property and any Village Common Property constitutes an interest in real property on a proportionate basis appurtenant to each benefitted Unit, the value of the interest of each Owner in such property shall be included in the assessed value of each Unit and any taxes levied directly against such community property should be of a nominal nature;

(d) Management, maintenance, improvement and beautification of landscaping and stormwater drainage and retention features on Common Property, Village Common Property and the Areas of Common Responsibility;

(e) Repayment of deficits previously incurred by the Association, if any, in making capital improvements to or upon the Common Property, Village Common Property or the Areas of Common Responsibility, and in furnishing services to or for the Owners or the Members of the Association;

(f) Repair and maintenance of all streets and roadways situated upon the Common Property, Village Common Property, or the Areas of Common Responsibility, which have not been dedicated to any governmental unit;

(g) Funding of appropriate reserves for future repair and replacement;

(h) Doing any other thing necessary or desirable in the judgment of said Association to keep the Properties, the Common Property, Village Common Property, and the Areas of Common Responsibility neat and attractive, or to preserve or enhance the value thereof, or to eliminate fire, health or safety hazards, or which, in the judgment of said Association, may be of benefit to the Owners or occupants of the Properties; and

(i) Operating, maintaining, repairing, and replacing the Common Property, Village Common Property, and Areas of Common Responsibility, including, but not limited to any lakes, ponds, waterways, canals, lagoons, and harbors.

Section 3. Determination of Annual Assessments.

(a) Operating Budget. It shall be the duty of the Board, by majority vote, at least ten (10) days prior to the end of the Association's fiscal year, to prepare and approve a budget covering the estimated costs of operating the Association during the coming year, including but not limited to operational items such as overhead and indirect costs, insurance, utilities, taxes, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and such capital improvement budget items as approved by the Board pursuant to Subsection (b) below (the "Annual Assessments").

(b) Capital Budget. The Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement costs. The Board shall set the required annual capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing. The annual capital contribution required shall be fixed by the Board and included within the annual operating budget and assessments. A copy of the capital budget shall be distributed to each Member as an appendix to the operating budget.

(c) Recreational Amenities. In the event that there are any Units exclusively benefitted by any Recreational Amenities, the Board shall, in preparing the Operating Budget and

the Capital Budget each year, and in setting the Annual Assessments, separately prepare sub-budgets of estimated costs and anticipated revenues for any such Units, such separate sub-budget being solely an accounting of the Common Expenses attributable to the operation, maintenance and repair of Recreational Amenities. The total amount of assessment derived from each such separate sub-budget is called the "Recreational Assessment." The purpose of preparing such separate Recreational Assessments is to subtract the amount thereof from the total Annual Assessments in order to apportion the net assessment derived from such subtraction among all Units, such net amount being the "Net Assessment", so that the Recreational Assessment is only apportioned among the Units which use and enjoy any such Recreational Amenities to the exclusion of any other Units in the Properties.

(d) Adoption of Budget. The Board shall cause a copy of the budget and the projected assessments to be levied for the following year, broken down according to type of Unit (and if necessary, according to Village) to be delivered to each Member prior to the end of the Association's fiscal year. The budget and the Annual Assessments shall become effective upon approval by the Board. In the event that the Board shall fail to propose a budget, then and until such time as a new budget shall have been approved by the Board, the budget in effect for the preceding year shall continue for the succeeding year.

(e) Allocation of Assessments. Each Unit shall be responsible for its allocable share of the Net Assessment plus, if the unit is a Unit benefitted by any Recreational Amenities, its allocable share of the Recreational Assessment, if any. Each Unit shall be responsible for that portion of the Net Assessment determined by multiplying the Net Assessment by a fraction, the numerator of which is the number of Equivalent Units assigned to that Unit and the denominator of which is the total number of Equivalent Units assigned to all Units subject to assessment. Each benefitted Unit shall also be responsible for that portion of the Recreational Assessment determined by multiplying the Recreational Assessment by a fraction, the numerator of which is the number of Equivalent Units assigned to that Unit and the denominator of which is the total number of Equivalent Units assigned to all Units subject to the Recreational Assessment. Those portions of the operating budget reflecting Village Common Expense shall be assessed only against those Owners and Units in the Village as to which the Village Common Expense is to be incurred by the Association, such assessment being the same for each similar type of Unit in the affected Village, and, if applicable, allocated between different Unit types within that Village as determined by the Board.

#### Section 4. Special Assessments.

(a) Special Assessments. In addition to the Annual Assessments established pursuant to Section 3 hereof, the Board may levy at any time a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Property, Village Common Property, or any Area of Common Responsibility, including the necessary fixtures and personal property

related thereto, for the purpose of covering any insufficiency of assessments to fund the actual monetary needs of the Association over and above the budgeted Annual Assessments, or for any other use or purpose deemed desirable or appropriate by the Board (the "Special Assessments"); provided, however, that any Special Assessments shall have the approval of a majority of the votes of the Members who are in attendance and voting in person or by proxy at a meeting duly called for said purpose. Special Assessments to be paid only by the Owners in a particular affected Village shall require only the approval of a majority of those Owners (without regard to class) within the affected Village who are in attendance in person or by proxy and voting at a meeting duly called for that purpose.

(b) Individual Assessment. The Association may levy an individual assessment upon any Owner to cover the costs incurred by the Association due to that Owner's failure to maintain its Unit pursuant to the standards set forth in this Master Declaration, or to reimburse the Association for any damage to any Common Property, Village Common Property, or any Area of Common Responsibility caused by any Owner or its tenant or invitee, or for any other purpose permitted by this Master Declaration or any Supplemental Declaration (the "Individual Assessments"). Individual Assessments shall be due and payable within thirty (30) days after written notice from the Association.

Section 5. Date of Commencement of Assessments; Initial Annual Assessments; Due Dates. The assessments for each Lot shall commence on the date that the subdivision plat depicting such Lot is recorded in the public records of Flagler County, Florida, or with respect to a condominium or cooperative Unit, on the date that the applicable declaration for a condominium or cooperative regime is recorded in the public records of Flagler County, Florida, and with respect to each Non-Residential Unit upon completion of the building improvements as evidenced by a Certificate of Occupancy or other equivalent, and assessments for each such Unit shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. The initial Annual Assessments for each Unit in each Additional Property shall be set forth in the pertinent Supplemental Declaration.

Annual Assessments shall be due, in advance, on or before commencement of the fiscal year for which imposed; provided, however, the Board shall have the discretion to collect Annual Assessments in installments over the year for which imposed at such payment intervals as it shall determine. In the event of such deferred payments, the Board shall also be permitted to charge a uniform rate of interest upon the amounts from time to time remaining unpaid at any rate deemed appropriate by the Board; provided, however, such rate shall not exceed the statutory usury limit then existing. The Board may accelerate the unpaid balance of any Annual Assessments upon default in the payment of any installment thereon.

The amount of the Annual Assessments to be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the Annual Assessments



provided for in Section 3 hereof as the remaining number of months in that year bears to twelve (12). The same reduction in the amount of the assessment shall apply to the first assessment levied against any Additional Property annexed at a time other than at the beginning of an assessment period.

With respect to timeshare condominium units, non-condominium timeshare units, or any other condominium units, the association having jurisdiction over such units shall collect all applicable assessments assessed against such units pursuant to this Master Declaration or any Supplemental Declaration and shall remit such assessments to the Master Association. Notwithstanding the collection of assessments due to the Association by any condominium association, nothing contained herein shall affect the Association's right to directly enforce each Owner's individual obligation to pay assessments to the Association pursuant to this Master Declaration or to the Owner's individual obligation to pay such assessments to the Association.

Section 6. Village Assessments. As part of the assessments levied by the Association pursuant to Section 3 and 4, each affected Owner shall pay Village Assessments imposed for any applicable Village Common Expense. The Village Assessments levied by the Association shall be collectible as part of, in the same manner, at the same time and on the same terms as the Annual Assessments and any Special Assessment. If applicable, the initial Village Assessment for each Unit in the Additional Property, shall be set forth in the pertinent Supplemental Declaration or in this Master Declaration with respect to the Properties. Assessments payable by Owners who are members of a condominium association shall be collected from such Owners by the condominium association and remitted by the condominium association to the Association. Assessments payable by Owners who are not members of a condominium association shall be remitted directly to the Association by such Owners.

Section 7. Certificate of Payment. Upon request, the Association shall furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence in favor of third parties of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-payment of Assessment. If any assessment is not paid on the date when due, then such assessment shall become delinquent and the delinquent assessment, together with interest thereon and/or late charges as shall be imposed by the Board, at its discretion, and the cost of collection thereof, as herein provided, shall be secured by a continuing lien on the lands and improvements located thereon with respect to the ownership of which the assessment accrued which shall bind such lands and improvements in the hands of the then Owner, its heirs, successors, personal representatives and assigns and successors in title. In the case of a non-condominium residential apartment building or a timeshare unit, liens for unpaid assessments shall attach to the underlying land and improvements as a whole. Such lien shall be prior to all other liens hereinafter created, except taxes or assessments levied by governmental authority, and except as to the lien of a mortgage as hereinafter provided. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not

pass to his successors in title unless expressly assumed by them, but no such assumption shall relieve any Owner personally obligated for delinquent assessments from such Owner's personal liability therefor.

If the assessment or installment thereon is not paid within thirty (30) days after the due date, same shall bear interest from the date due at the highest rate allowed by Florida law or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action at law for collection against the Owner personally obligated to pay the same and/or to foreclose the lien against the lands and improvements, and there shall be added to the amount of such assessment the aforesaid interest, late charges, if any, costs of collection and court costs, and reasonable attorneys' fees, including court costs and attorney's fees upon appeal, and the said costs of collection shall be recoverable whether or not suit be brought.

If it becomes necessary for the Association to file a claim of lien against any Unit, a lien fee in an amount set by the Board may be charged by the Association. Such lien fee shall be added to the unpaid assessment and same shall be secured by the lien hereby created.

The Association (or any Village Association with respect to the applicable Village Association of which Owner is a member), may suspend the voting rights of an Owner of a Unit for the nonpayment of regular Annual Assessments and/or Village Assessments that are delinquent in excess of ninety (90) days.

Section 9. Subordination. The lien of the assessments provided for by this Master Declaration shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Unit in the Properties and held by a commercial or savings bank, trust company, credit union, industrial loan association, insurance company, pension fund, or business trust, including but not limited to a real estate investment trust, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender, or any private or governmental institution or agency which has insured the loan of any such lender, or any combination of any of the foregoing entities; provided, however, that a sale or transfer of any Unit pursuant to a decree of foreclosure, or pursuant to any proceeding in lieu of foreclosure, shall not relieve such Unit from liability for any assessments which thereafter become due, nor from the lien of any subsequent assessment. Said assessment liens, however, shall be subordinate to the lien of any such mortgage or mortgages hereafter placed upon the Properties subject to assessment.

Section 10. Subsidies. So long as Declarant pays the subsidy called for in this Section 10, Declarant shall be exempt from the payment of any assessments with respect to Properties subject to this Master Declaration that are owned by Declarant. Declarant covenants and agrees that, until not later than when the Declarant's membership in the Association ceases to exist, Declarant shall pay to the Association, as incurred, the balance of the actual operating deficits (excluding the cost of funding deferred maintenance and reserve accounts) after levying and payment of assessments due from Owners other than Declarant pursuant to assessments levied by the Board pursuant to this

Declaration. The foregoing to the contrary notwithstanding, Declarant shall not pay more than the assessments that Declarant would have been required to pay if the Declarant owned Units and portions of the Properties that were not exempt. At any time, Declarant shall be entitled to terminate, by written notice to the Association, Declarant's obligation to pay the operating deficits of the Association. Following termination or expiration of Declarant's subsidy obligations under this subparagraph, Declarant shall pay the applicable per-Unit assessment for each then assessable Unit or portion of Properties then owned by Declarant prorated for the year in which such payment commences.

Section 11. Working Capital. There shall be paid to the Association for each Unit in the Properties a contribution to the working capital of the Association ("Working Capital Assessment") equal to two (2) months of annual assessments applicable to that Unit and paid as follows:

(a) Residential Units.

(i) Non-Timeshare Condominiums. As to each condominium Residential Unit which is not subject to a timeshare regime, the Working Capital Assessment shall be paid to the Association by the purchaser at the closing of the sale of the Residential Unit by the condominium developer to the first purchaser.

(ii) Timeshare Condominiums. As to each condominium Residential Unit which is subject to a timeshare regime, the Working Capital Assessment shall be paid to the Association by the timeshare developer at the closing of the first sale of a timeshare unit applicable to that Residential Unit.

(iii) Non-condominium Residential Apartment Unit. As to each non-condominium residential apartment unit the Working Capital Assessment shall be paid to the Association upon issuance of a certificate of occupancy by the applicable governmental authority.

(iv) Other Residential Units. As to each Residential Unit which is not a condominium Residential Unit or non-condominium residential apartment unit, the Working Capital Assessment shall be paid to the Association by the purchaser upon the earlier of: (i) the first occupancy of a dwelling on that Residential Unit, or (ii) the closing of the sale of that Residential Unit (with or without a dwelling) to the first purchaser who is not a licensed home builder purchasing the Residential Unit for resale in the ordinary course of the purchaser's home building business.

(b) Non-residential Units. The Working Capital Assessments for all Non-residential Units located or to be located within any parcel of land which is designated for non-residential development and use shall be paid to the Association by the purchaser/developer of that non-residential parcel upon the earlier of: (i) closing of the purchase of that parcel from Declarant or (ii) issuance by the applicable governmental authority of each Certificate of Occupancy or

equivalent for any building improvements constructed on that parcel of land. If the number of Non-residential Units to be developed on the applicable non-residential parcel is not fixed at the time payment is due, then the purchaser/developer of that parcel shall pay Working Capital Assessments based on the maximum density of development permissible under governmental development approvals then in effect. If the number of Non-residential Units thereafter developed on that parcel when fully developed is less than the number as to which Working Capital Assessments are paid pursuant to the preceding sentence, then the Association shall rebate the excess Working Capital Assessments so paid. **In no event shall Declarant be subject to payment of the Working Capital Assessment if Declarant seeks to develop Non-residential Units on its behalf. The Hammock Beach Club Proper Owner shall not be required to pay Working Capital Assessments with respect to any of the Hammock Beach Club Property submitted to this Master Declaration as part of the Additional Properties.**

Working Capital Assessments are not advance payments of Annual Assessments. Except as provided in Subparagraph (b) above, Working Capital Assessments shall not be returned to the Owner by the Association under any circumstance, including, without limitation, sale of the Owner's Unit.

## ARTICLE VII.

### ARCHITECTURAL CONTROL

Section 1. Architectural Control. Except as otherwise expressly provided in this Master Declaration, all lands and improvements in the Properties are subject to architectural and environmental review. This review shall be in accordance with this Article VII and the Planning Criteria described below. No site work, landscaping, utilities extensions, drainage improvements, paving, parking areas, construction, fence, wall or any other physical or structural improvement, (including without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, greenhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, screened enclosures, television or radio antennae, satellite receiving dishes and equipment, swimming pools, tennis courts, playhouses, swing sets, basketball courts, standards and/or backboards or any other recreational devices or equipment) nor shall any exterior addition to or change or alteration to the exterior of any existing structure or improvement be made (including, without limitation, painting or staining of any exterior surface) or change or alteration to the exterior of any existing structures or improvements, or to any existing landscaping, shall be commenced, erected or maintained unless and until the plans or specifications showing the nature, size, workmanship, design, signs, shape, finished grade elevation, height, materials and color of the same, together with a detailed landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes, shall have been submitted to and approved in writing by the Architectural Review Board ("ARB") as to consistency with the Development Plan and the Harbor Village Marina Architectural Review Guidelines (collectively, "Planning Criteria"), harmony of exterior design and materials and

location in relation to surrounding structures, and as to drainage features and topography. Nothing herein contained shall be deemed to limit the right of an Owner to finish or alter the interior of that Owner's improvements as that Owner deems appropriate or desirable.

Section 2. ARB. The ARB shall promulgate and revise from time to time the Planning Criteria for the Properties which shall, at a minimum, be consistent with the regulations of any governmental agency with jurisdiction to regulate the planning, construction and development of the Properties. The ARB shall determine the fees and fines for violations of the Planning Criteria which shall be set forth in the Planning Criteria. In addition, the ARB shall be responsible for administering the Planning Criteria and determining the fees and fines designated therein. The Planning Criteria shall be set forth in writing and made available to all builders doing business in the Properties, and to all Owners and prospective Owners. The Planning Criteria may include any and all matters considered appropriate by the ARB not inconsistent with the provisions of this Master Declaration, including, without limitation, minimum square footage requirements for Residential Units, construction deposits in amounts required by ARB to ensure repair and replacement of damage resulting from construction activities, and fines for violations of the Planning Criteria on the terms of this Article VII. Different Planning Criteria may be adopted and enforced for improvements in different portions of the Properties. In the event of a conflict between the Planning Criteria and this Master Declaration, the terms and provisions of this Master Declaration shall control.

So long as Declarant owns any lands subject to this Master Declaration, Declarant shall be entitled to appoint all members of the ARB. Thereafter, the membership of the ARB shall be determined by the Board. The ARB shall consist of no less than three (3) members, none of whom shall be required to be Owners or occupants of the Properties. Declarant may at any time assign in writing its powers of removal or appointment to any entity or person, subject to such terms and conditions as Declarant may choose to impose: A majority of the members of the ARB shall constitute a quorum for transacting business, and the concurrence of a majority of the members of the ARB shall be required for any decision of the ARB. The conclusion and opinion of the ARB shall be binding. The ARB shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. If in its opinion, for any reason, including purely aesthetic reasons, the ARB should determine that any proposed improvement, alteration, etc. is not consistent with the Planning Criteria or the Development Plan, such alteration or improvement shall not be made.

Section 3. Approval or Disapproval. Unless waived by the ARB, all plans and specifications shall be prepared by a Florida licensed or certified architect or engineer, said person to be employed by and at the expense of the Owner making the application. Approval of the plans and specifications may be withheld not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Master Declaration, but also by virtue of the reasonable dissatisfaction of the ARB with the location of the structure on the lot, the elevation, the color scheme, the finish, design, proportions, architecture, drainage plan, shape, height, style and

appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the property, or because of its reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the ARB, will render the proposed item of improvement inharmonious or out of keeping with the general Development Plan or the Planning Criteria. Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. The Owner shall obtain a written receipt for the plans and specifications from a member of the ARB. Plans and re-submittals thereof shall be approved or disapproved within thirty (30) days after receipt by the ARB. If the ARB fails to respond to any initial submittal or re-submittal of any of the above-described plans and/or specifications (or a portion thereof) within the time period specified in this provision, Owner may give to the ARB notice of such failure to respond (specifically citing this Master Declaration and this provision) stating that unless the ARB responds within ten (10) days after acknowledgment or verification of receipt of such notice by the ARB, approval of such plans shall be deemed granted. Thereafter, if the ARB does so fail to respond within such ten (10) day period, the ARB shall be deemed to have approved the proposed plans (or portion thereof) as last submitted, provided that the same are in conformance with the restrictions imposed by the Master Declaration and any previous submissions of any plans which have been approved by the ARB. The ARB approval or disapproval, as required by this Master Declaration, shall be in writing and shall accompany one (1) set of plans to be returned to the Owner. Whenever the ARB disapproves plans and specifications, the disapproval shall be accompanied by a written outline of the reason or reasons for such disapproval. The remaining set of plans shall be retained by the ARB. The ARB shall establish fees sufficient to cover the expenses of reviewing plans and related data and to compensate any consulting architects, landscape architects, engineers, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. The fee initially established for such review shall be Five Hundred and No/100 Dollars (\$500.00) for each submission, and the ARB shall have the right to increase or decrease this amount from time to time.

Section 4. Violations. The work approved must be performed strictly in accordance with the plans, specifications and plot plans, as submitted and approved. If after such plans and specifications have been approved, the improvements are altered, erected, or maintained upon the property otherwise than as approved by the ARB, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the ARB having been obtained as required by this Master Declaration. Following approval of any plans and specifications by the ARB, representatives of the ARB shall have the right during reasonable hours to enter upon and inspect any property or improvements with respect to which construction is underway within the Properties to determine whether or not the plans and specifications thereof have been approved and are being complied with. After the expiration of one (1) year from the date of completion of any improvement, addition or alteration, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to comply with all of the provisions hereof unless a notice of such noncompliance executed by any member of the ARB shall appear of record in the office of the Clerk of the Circuit Court of Flagler County, Florida, or legal proceedings shall have been instituted to

enforce compliance with these provisions. Upon approval of the ARB, it shall be conclusively presumed that the location and exterior configuration of any building, structure or other improvement placed or constructed in accordance with the approved plans and specifications does not violate the provisions of this Master Declaration. The approval of the ARB of any plans or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the ARB of its rights to object to any of the features or elements embodied in such plans or specifications if or when the same features or elements are embodied in any subsequent plans or specifications submitted.

Section 5. Variances. The ARB may authorize variances from compliance with any of the architectural provisions of this Master Declaration or the Planning Criteria, including without limitation restrictions upon height, size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and must be signed by at least two (2) members of the ARB and shall be effective upon delivery to the Owner. If such variances are granted, no violation of this Master Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Master Declaration or the Planning Criteria for any purpose except as to the particular Unit and the particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of the Owner's Unit, including but not limited to zoning ordinances and setback requirements imposed by Flagler County.

Section 6. Waiver of Liability. Neither Declarant, the ARB, any member of the ARB, the Association or any of their representatives shall be liable in damages to anyone submitting plans for approval or to any Owner or occupant of the Properties by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval of any plans, or the failure to approve any plans. Every person who submits plans for approval agrees, by submission of such plan, and every Owner or occupant of any Unit agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages. Approval of any building plans, specifications, site or landscape plans or elevations, or any other approvals or consents pursuant hereto or otherwise is given solely to protect the aesthetics of the Properties and shall not be deemed a warranty, representation or covenant that such buildings, improvements, landscaping or other action taken pursuant thereto or in reliance thereof complies with, or is not in violation of, any applicable laws, ordinances, requirements, codes, rules or regulations. No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any improvement built in accordance therewith will be built in a lawful, safe, good and workmanlike manner. Declarant, the ARB, or any agent or consultant thereof, shall not be responsible in any way for any defects in any plan or specifications

submitted, revised or approved in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans and specifications.

Section 7. Enforcement of Planning Criteria. Declarant and the Board shall have the standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the Planning Criteria and the decisions of the ARB and they shall have all remedies available at law and in equity, including without limitation action to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorney's fees and costs incurred, whether or not judicial proceedings are instituted, shall be collectible from the violating Owner. In addition, should any Owner fail to comply with the requirements hereof after thirty (30) days written notice, Declarant and the Association shall have the right to enter upon the Owner's property, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof or the Planning Criteria, and charge the cost thereof to the Owner. Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Unit for any trespass or damages or injury to the property or person unless caused by negligence or intentional wrongdoing.

Section 8. Term of Approval. Approval by the ARB shall be effective for a period of one (1) year from the date the approval is given, or deemed given pursuant to this Article VII, Section 3. If construction has not commenced within the said one (1) year period, the approval shall have expired and no construction shall thereafter commence without the ARB's written renewal of such prior approval which renewal may contain additional conditions or which the ARB may require the Owner to submit to the ARB for review as a new submission pursuant to this Article VII.

Section 9. Exempt Property. The provisions of this Article VII of this Master Declaration shall never apply to any portion of the Hammock Beach Club Property located within the Properties. In addition, the provisions of this Article VII of this Master Declaration shall not apply to any property owned by Declarant within the Properties while owned by the Declarant. Accordingly, the design, construction, installation and placement of any buildings, landscaping, parking, docks, marinas and other improvements located on any portion of the Hammock Beach Club Property located within the Properties, or on any other property owned by Declarant within the Properties, while such other property is owned by the Declarant shall be exempt from compliance with the provisions of this Article VII. The Declarant reserves the right to exempt all or portions of any Additional Property from all or certain provisions of this Article VII, in its sole discretion and such election by the Declarant shall in no way affect the portion of the Additional Properties subject to this Article VII and not exempted by the Declarant.

Section 10. Protection of Hammock Beach Club Property. Notwithstanding anything contained herein to the contrary, in order to preserve the aesthetic value of the Hammock Beach Club Property, the ARB shall promptly provide to the Hammock Beach Club Property Owner copies of



all plans and specifications submitted to it by an Owner of a Unit which abuts any portion of the Hammock Beach Club Property located within the Properties, or is located across the street or a tract of land thereby making it visible from the Hammock Beach Club Property located within the Properties. The Hammock Beach Club Property Owner shall have the right to review the plans and specifications and provide its comments to the ARB within ten (10) days of the Hammock Beach Club Property Owner's receipt of such plans and specifications. The ARB shall consider the Hammock Beach Club Property Owner's comments in good faith.

## ARTICLE VIII.

### EXTERIOR MAINTENANCE

Section 1. Owner, Association, and Village Association Responsibilities; Default. Except to the extent performed by the Association, a Village Association, or the CDD, it shall be the affirmative duty of each Owner at all times to keep and maintain all improvements, lawns, landscaping, and grounds, and all stormwater drainage and retention facilities located on and serving to drain its Unit, in good and presentable condition and repair consistent with the approved plans and specifications therefor. Except to the extent performed by the Association, a Village Association, or the CDD, each Owner shall landscape, irrigate, mow, trim and otherwise maintain in good and presentable condition the areas lying between the boundaries of that Owner's Unit and the waterline of any lake, canal, lagoon or pond located more than fifty feet (50') of the nearest boundary of that Owner's Unit. It shall be the affirmative duty of the Association or Village Association at all times to keep and maintain the improvements, lawns, landscaping, grounds, and stormwater drainage and retention improvements located on and serving to drain Common Property and/or Village Common Property made subject to its ownership or control in good and presentable condition and repair. The Association shall have the right to provide exterior maintenance upon any Unit or Village Common Property and improvements thereon in the Properties in the event of default by any Owner or Village Association in its duties hereby imposed; subject, however, to the following provisions. Prior to performing any maintenance on an Owner's Unit or on any Village Common Property owned or controlled by a Village Association, the Board shall determine that same is in need of repair or maintenance and is detracting from the overall appearance of the Properties. Except in the event of an emergency, prior to commencement of any maintenance work, the Board must furnish fifteen (15) days prior written notice to the relevant Owner or Village Association at the last address listed in the Association's records notifying the Owner or Village Association that unless certain specified repairs or maintenance are commenced within said fifteen (15) day period and thereafter diligently pursued to completion, the Association may procure said repairs and charge same to the benefitted Owner(s) and/or Village Association. Upon the failure of the Owner or Village Association to act within said period of time and to thereafter diligently pursue repairs or maintenance, the Association shall have the right to enter in or upon any Unit or Village Common Property and the exterior of improvements located thereon, or to hire personnel or contractors to do so, to make such necessary repairs, or

maintenance as is specified in the written notice. In this connection, the Association shall have the right to do such things as, but limited to, paint, repair, replace and care for roofs, gutters, down spouts and exterior building surfaces, clean or resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements, as well as to provide general cleanup, shoreline maintenance, and removal of debris which in the opinion of the Association detracts from the overall beauty and setting of the Properties. Declarant and the Association, or their agents or employees, shall not be liable to any Owner or Village Association for any trespass or damages or injury to the property or person of the Owner or Village Association or the occupants or invitees of the affected Unit or Village Common Property or any improvements thereon unless caused by negligence or intentional wrongdoing.

Section 2. Assessment of Cost. The cost of the repair or maintenance referred to in Section 1 shall be assessed as an Individual Assessment against the Owner of the Unit upon which such maintenance is done or, in the case of work performed on Village Common Property, against all Owners who are members of the applicable Village. Said Individual Assessment shall be secured by a lien upon each such Owner's Unit and shall also constitute a personal obligation of each such Owner. The Individual Assessment shall be collectible along with interest at the highest rate allowed by law from date of expenditure to date of payment by the Owner, and costs of collection and attorneys fees, in the same manner as delinquent Annual Assessments.

Section 3. Access at Reasonable Hours. For the purpose of performing the repairs or maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right to enter upon any Unit and Village Common Property and the exterior of any improvements thereon during normal business hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board, entry may be made on any day and at any hour.

Section 4. Association Maintenance Responsibility. The Association shall maintain and keep in good and presentable condition and repair all of the Common Property, Village Common Property (if made subject to the ownership and control of the Association) and Areas of Common Responsibility, and all improvements thereon. Except to the extent any of the following are conveyed to or maintained by the CDD, said maintenance obligation shall be deemed to include but not be limited to maintenance, repair and replacement, of (i) the Recreational Amenities, if any, (ii) all private roads, if any, road shoulder, landscaped medians, walks, trails, harbors, lakes, canals, lagoons, ponds, Surface Water Management System, parking lots, landscaped areas, and other improvements situated within the Common Property and, (iii) security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of its said Properties and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iv) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said Properties. The Association shall not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person, (ii) resulting from any

rain or other surface water which may leak or flow from any portion of its Properties, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility situated upon the said Common Property, Village Common Property, or Areas of Common Responsibility. Except to the extent any of the following are conveyed to or maintained by the CDD, it shall also be the affirmative duty of the Association to maintain as a Common Expense all stormwater drainage and retention improvements and features located in the Properties or Areas of Common Responsibility and comprising part of the Surface Water Management System. All maintenance of each Unit in the Properties and all parts of any structure thereon, unless specifically identified as being the responsibility of the Association or any Village Association shall be the responsibility of the Owner of such Unit. The Association and any applicable Village Association shall be responsible for all maintenance of Common Property and Village Association Common Property, as applicable, notwithstanding the fact that Declarant or the Village Association may not yet have transferred the same to the applicable association.

Section 5. Exculpation from Liability and Responsibility. It is contemplated that title to or easements for the roadways, water, sewer, irrigation, utilities and Surface Water Management System for the Properties have heretofore been, or hereafter may be granted, and conveyed by the Declarant to the Association, Village Association, or the CDD. Following such conveyance, the Association, Village Association, or CDD, as applicable, shall, subject to the terms and provisions of this Master Declaration, have sole and exclusive jurisdiction over and responsibility for the ownership, administration, management, regulation, care, maintenance, repair, restoration, replacement, improvement, preservation and protection of the roadways, water, sewer, irrigation, utilities and Surface Water Management System within the Properties. Accordingly, each Owner, by the acceptance of a deed or other conveyance to his Unit shall be deemed to have agreed that neither the Declarant, Flagler County nor any other governmental agency other than the CDD, if applicable, shall have any liability or responsibility whatsoever (whether financial or otherwise) with respect to the roadways, water, sewer, irrigation utilities and the Surface Water Management System for the Properties, upon such conveyance to the Association, Village Association, or the CDD, and each such Owner shall be deemed to have further agreed to look solely and exclusively to the Association, Village Association, or CDD with respect to any such liability or responsibility.

Section 6. Community Development District. Notwithstanding anything contained in this Master Declaration to the contrary, Declarant reserves for itself, the Association, any Village Association, and their respective successors and assigns the right to dedicate, transfer, sell or otherwise convey portions of the Common Property and Village Common Property to the CDD for purposes of having the CDD construct, operate, maintain and repair any and all improvements which the CDD may legally own and operate pursuant to the provisions of Chapter 190, Florida Statutes. Such public improvements may include, without limitation, roads, sewer and water facilities, landscaping, entry features, swimming pools, docks, parks, gazebos, leisure trails, bike paths and other recreational facilities. The Association and/or Village Association may also contract with the CDD for the CDD to perform any maintenance or repairs of Common Property, Village Common

Property, and any Area of Common Responsibility. Each Owner shall execute all approvals and consents necessary to make all the Properties subject to the CDD and the laws, regulations and rules relating to the CDD. By acceptance of its deed of conveyance, each Owner appoints Declarant, as attorney-in-fact for the Owner to execute any and all such approvals, consents and other instruments necessary to fully implement the CDD and make said Owner's property subject the CDD and the laws, regulations and rules relating to the CDD. The foregoing appointment is a power coupled with an interest and shall be irrevocable. Each Owner shall be solely responsible for all service charges, fees, taxes and assessments levied by the CDD with respect to the Unit owned by such Owner, and failure to pay same when due may result in the imposition of CDD liens against the Unit. All of the rights, duties, responsibilities and obligations of the Association or any Village Association under this Master Declaration relating to the improvements and function undertaken by the CDD shall terminate and such rights, duties, responsibilities and obligations shall thereafter be undertaken and performed by the CDD.

ARTICLE IX.

MISCELLANEOUS COVENANTS

Except as may be otherwise set forth in this Master Declaration, in any Supplemental Declaration, in any agreement with Declarant, or by specific deed covenant or restriction imposed by Declarant, the following covenants, conditions, restrictions and reservations shall apply with respect to the Properties.

Section 1. Compliance with Law and Development Order. In addition to complying with plans and specifications approved by the ARB, all improvements constructed on a Unit shall be designed and constructed in compliance with all applicable laws, ordinances, codes, regulations and requirements of governmental authorities with jurisdiction over the Properties, including, without limitation, all applicable zoning, building codes, health and fire-safety codes and all requirements related to construction in flood hazard areas.

The property subject to the encumbrance of this Master Declaration shall also be subject to the covenants, conditions and restrictions contained in the Development Order, as amended from time to time, including without limitation, Section 8.4 of the Development Order pertaining to the use of biodegradable fertilizers and approved pesticides and fungicides, and Section 9.3 relating to the preservation of trees and tree root systems during construction.

Section 2. Use of Residential Units. Each Residential Unit shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Residential Unit as an office by an Owner or other occupant shall not be considered to be a violation of this covenant if such use is lawful and does not create regular customer, client or employee traffic. Lease or rental of a Residential Unit for residential purposes shall also not be considered to be a violation of this covenant.

Section 3. Water Wells and Septic Tanks. Subject to the terms of Article IV, Section 5, herein, no private water wells or septic tanks may be drilled, installed or maintained on the Properties. Shallow well pumps may be authorized by the ARB for air conditioning/heating and lawn and garden irrigation use, if tests indicate water is satisfactory.

Section 4. Landscaping. Except to the extent performed by the Association, Village Association, or the CDD, landscaping on each Unit and stormwater drainage and retention features located on and serving only that Unit shall be continuously maintained in good, aesthetically pleasing condition by the Owner thereof. Except to the extent performed by the Association, Village Association, or the CDD, the Owner of each Unit abutting a body of water or any canal shall maintain the shoreline of said Unit free of debris and weeds consistent with applicable environmental regulations. All landscaped and grassed areas on each Unit shall be watered by means of an automatic underground sprinkler system which shall be employed so as to keep all vegetation in excellent condition. Landscaping as approved by the ARB shall be installed prior to occupancy of the building improvements on each Unit.

Section 5. Obnoxious or Offensive Activity. No obnoxious or offensive activity shall be allowed upon the Properties, nor shall any use or practice be allowed which interferes with the peaceful possession and proper use and enjoyment of the Properties, nor shall any improper, unsanitary, unsightly, offensive or unlawful use be made of or condition or activity permitted on any Unit or improvements thereon or of the Common Property or Village Common Property, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed. The use, enjoyment and occupancy of the Properties shall be in such a manner so as not to cause or produce any of the following effects discernible outside buildings located thereon or affect the adjoining property or any portion or portions thereof; noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness; smoke, noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; or vibration. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Properties, or except as may be permitted by the ARB.

Section 6. Rules and Regulations. Rules and regulations promulgated by the Board as to the use and enjoyment of the Properties shall be observed by the Owners and occupants thereof. Such rules and regulations may supplement or clarify the terms of this Master Declaration, any Supplemental Declaration, or any provision, covenant or restriction contained in either. Copies of such rules and regulations shall be made available to each Owner prior to the time same become effective. Such rules and regulation shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Board or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the votes cast.

Section 7. Animals. No animals, livestock, birds, poultry or reptiles of any kind shall be raised, bred, or kept by any Owner upon any portion of the Properties except for a reasonable number of dogs, cats, birds or other usual and customary household pets kept in dwellings, subject to rules and regulations adopted by the Association, and any applicable Flagler County, Florida restrictions, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. For purposes hereof, numbers in excess of two (2) of each such type of household pet (other than aquarium-kept tropical fish) shall *prima facie* be considered unreasonable. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No exterior structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Properties, without the written consent of the Board. Upon the written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 7, a particular pet is an usual and customary household pet or such pet is a nuisance, and the Board shall have the right to require the Owner of a particular pet to remove such pet from the Properties if such pet is found to be a nuisance or to be in violation of these restrictions. Each Owner shall be liable to the Association and/or Village Association for the cost of repair of any damage to the Common Property and/or the Village Association caused by the pet of such Owner or of an occupant of such Owner's dwelling.

Section 8. Garbage and Trash. No trash, rubbish, debris, garbage or other waste material or refuse shall be placed, stored or permitted to accumulate on any part of the Properties except in covered or sealed sanitary containers. All such sanitary containers must be stored within each building, buried underground, or placed within an enclosure or concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integrated with the concept of the building plan, shall be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible.

Section 9. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and same may be installed only within an approved accessory building, within a screened area, or buried underground, and shall otherwise comply with standards established from time to time by the Board.

Section 10. Vehicles. Each Owner shall provide for parking of vehicles off streets and roads within the Properties. Except as otherwise specifically provided in this Master Declaration, no parking shall be permitted in or along any of the streets in the Properties. There shall be no outside storage or parking upon any portion of the Properties of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than personal-use pick-up trucks and sport-utility vehicles), commercial vehicles of any type (including, without limitation, cars or trucks with advertising signs or lettering), camper, motorized camper or trailer, boat or other water craft, boat trailer, motorcycle, motorized go-cart, or any other related forms of transportation devices, except if adequately screened from view or otherwise permitted in writing by the Declarant or the Association. No Owners or other occupants of any portion of the Properties shall repair or restore

any vehicle of any kind upon or within a property subject to this Master Declaration except (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Violators of the prohibitions contained in this Section 10 shall be subject to having their vehicles towed, at the Owner's expense, by or at the direction of the Association, and to the levy of fines by the Association in such amount as may be determined from time to time by the Board. Additional rules and regulations regarding use, repair and storage of vehicles in the Properties may be promulgated from time to time by the Board.

Section 11. Temporary Structures. No structure of a temporary character shall be placed upon the Properties at any time; provided, however, that this prohibition shall not apply to (i) Declarant's or its designated successors' and assigns' sales and construction activities or (ii) shelters or temporary structures used by the contractor during construction of permanent structures (provided such temporary shelters may not, at any time, be used as residences or permitted to remain on the subject property after completion of construction). The provisions of this Section 11 shall not prohibit the erection of temporary structures for social functions as may be permitted by rules and regulations promulgated by the ARB.

Section 12. Signs. No signs, advertisements, billboards or solicitation or advertising structures of any kind shall be erected, modified or maintained within any windows, on the exterior of any improvements, or on the grounds of any Unit, unless prior written approval of the ARB is obtained; provided, however, street numbers shall be permitted without prior written approval.

Section 13. Air Conditioning Equipment. No air conditioning equipment which is visible on the exterior of any improvement shall be permitted in the Properties unless approved by the ARB in accordance with Article VII. Approval shall be based upon adequacy of screening and/or landscaping of such equipment. Window air conditioning units are prohibited. The ARB may impose stricter standards, with respect to air conditioning equipment.

Section 14. Drainage Structures. No person (other than Declarant or its successors and assigns), without the prior written approval of the ARB and St. Johns River Water Management District, shall obstruct, alter or in any way modify the method and/or structures of drainage utilized or now or hereafter installed by Declarant, the CDD, the Association, or Village Association from, on and over any Unit, Common Property, Village Common Property, or any Area of Common Responsibility; nor shall any structure be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation.

Section 15. Receiving and Transmitting Devices. No television antenna, radio receiver, satellite receiving dish having a diameter in excess of twenty (20) inches, or other similar device shall be erected, attached to or installed on any portion of the Properties, unless contained entirely within the interior of a building or other structure or screened from view in accordance with architectural or landscaping standards adopted therefor by the ARB, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any property

within the Properties; provided, however, that Declarant, the Association, and their designated, successors, assigns and licensees, shall not be prohibited from installing equipment necessary for mast antenna, security, cable television, satellite receiving facilities, mobile radio, or other similar systems within the Properties, subject to any applicable laws or regulations.

Section 16. Further Subdivision. No part of the Properties shall be further subdivided except as platted without the prior written consent of Declarant for so long as Declarant owns any portion of the Properties, and thereafter by the Board.

Section 17. Additional Restrictions. Declarant, or its designated successors or assigns, may impose additional covenants and restrictions on property then owned by Declarant or its designated successor or assign, without the consent of any Owner or the Association. Declarant reserves the right to impose additional covenants, conditions and restrictions on Additional Properties owned by it pursuant to the Supplemental Declaration applicable to each such Additional Property.

Section 18. Completion of Construction. After commencement of construction of any improvements in the Properties, the Owner shall diligently prosecute the work thereon, to the end that the improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof, but in all events, any Residential Unit shall be completed, not later than eighteen (18) months from commencement of construction. The Owner of the Unit on which improvements are being constructed shall at all times keep public and private streets contiguous to the Unit free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of the improvements. During construction, the Owner shall require its contractors to maintain the Unit upon which such work is being done in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuge containers. Upon completion of construction, the Owner shall cause its contractors to immediately remove all equipment, tools, and construction material, and debris from the Unit.

Section 19. Excavation. No clearing or excavation shall be made, except in connection with the construction, maintenance or repair of an improvement; and, upon completion thereof, exposed openings shall be back-filled, and disturbed ground shall be leveled, graded and seeded, as provided on the approved plans for landscaping.

Section 20. Changes to Development Plan or Development Order. No Owner shall seek directly or indirectly to change or amend any aspect of the Development Plan for the Properties or the Development Order which such change or amendment would in any manner affect any part of the lands included in the Development Plan for the Properties, including, but not limited to, any change in permitted density of development, permitted land use, stormwater drainage requirements or otherwise, without the prior written consent of Declarant, for so long as Declarant owns any lands included in the Development Plan for the Properties, which consent may be granted or denied by Declarant, in its sole discretion.



Section 21. Mailboxes. No mailboxes shall be permitted in the Properties unless and until approved by the ARB, and subject to such requirements as may be imposed by the ARB.

Section 22. Clotheslines. No clotheslines shall be permitted in the Properties. No clothing, rugs, or other unsightly or inappropriate item may be hung on any railing, fence, hedge, or wall.

Section 23. Play Structures and Yard Accessories. All yard accessories and play structures, including basketball backboards and any other fixed games, shall be subject to ARB review and prior approval.

Section 24. Trees. Unless located under or within ten (10) feet of a permitted improvement, no Owner (other than Declarant may cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four (4) feet above the ground level, or other significant vegetation as designated from time to time by the ARB, without obtaining the prior approval of the ARB; provided, however, that dead or diseased trees or other designated significant vegetation which are inspected and certified as dead or diseased by the ARB shall be removed promptly from any property by the Owner thereof. In the event of conflict between the provisions of this Section 24 and any laws pertaining to cutting and removal of trees and vegetation, the more restrictive of the two shall apply.

Section 25. Garages. No garage shall be converted to living area without prior ARB approval.

Section 26. Fences. No fences shall be erected without prior ARB approval. No chain link fences shall be permitted.

Section 27. Lights. The design and location of all exterior lighting fixtures shall be subject to the approval of the ARB. Neither those lighting fixtures nor any other illumination devices, including, but not limited to, holiday lighting displays and ornaments, located anywhere on the structures or grounds of any property shall be located, directed, or of such intensity to affect adversely, in the sole discretion of the ARB, the night-time environment of any adjoining property.

Section 28. Security Systems. In the event that either Declarant, or the Association shall install a central security system within the Properties, or in the event Declarant grants to a third-party supplier the right to install same, with the capability of providing security services to each Residential Unit within the Properties, then no Owner shall be entitled to install or maintain any alternative security systems within a dwelling other than security systems which are appurtenant to and connected with such central security system, without obtaining the prior written consent and approval of the Declarant and the Board.

Section 29. Preservation Areas. Preservation areas designated on any plats of the Properties are subject to the following restriction: "Activities that interfere with the natural vegetative condition of the Preserve Area are prohibited within the Preserve Area including, without limitation, mowing, filling, grading, clearing of vegetation, planting of vegetation or disposal of yard waste within the Preserve Area."

Section 30. Non-applicability to Certain Units.

(a) Provisions 2, 5, 6, 7, 10, 12, 13, 15, 16, 21, 23, 24, 26, 27 and 28 of this Article IX shall not be applicable to any Non-residential Units.

(b) Provisions 5, 12, 15, 16, 21, 23, 24, 26, 27 and 28 of this Article IX shall not be applicable to any timeshare units.

(c) Provisions 5, 12, 15, 16, 21, 23, 24, 26, 27 and 28 of this Article IX shall not be applicable to any condominium units.

(d) Provisions 2, 12, 15, 16, 21, 23, 24, 26, 27 and 28 of this Article IX shall not be applicable to any apartment units.

Section 31. Exempt Property. This Article IX shall not apply to any portion of the Hammock Beach Club Property located within the Properties. The Declarant reserves the right to exempt all or portions of any Additional Property from all or certain provisions of this Article IX and such election by the Declarant shall not in any way affect the portion of the Additional Property subject to this Article IX.

ARTICLE X.

AMENDMENT

Section 1. Amendments by Owners. Except as to provisions relating to amendments set forth herein regarding certain specific items and the method of amending or altering same, any other provisions, covenants, or restrictions set forth herein may be amended in accordance with this provision. The holders of at least two-thirds (2/3) of the votes in the Association, without regard to class, may change or amend any provision hereof (1) by executing a written instrument in recordable form setting forth such amendment, or (2) by causing a certified copy of a duly adopted resolution to be recorded in the public records of Flagler County, Florida. A proposed amendment may be initiated by Declarant, the Association, or by petition signed by ten percent (10%) of the Owners. If a proposed amendment is to be adopted by vote, a written copy of the proposed amendment shall be furnished to each Owner at least fifteen (15) days but not more than ninety (90) days prior to the meeting to discuss the proposed amendment. If adopted by vote, affirmative vote required for adoption shall be two thirds (2/3) of the votes of the Members (without regard to class) who shall

be present in person or by proxy at a meeting duly called, and the recorded certificate shall contain a recitation that notice was given as above set forth and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full right to rely upon said recitation in such recorded certificate. The amendment shall be effective upon recordation of the executed amendment or the certified copy of the duly adopted resolution among the public records of Flagler County, Florida.

So long as Declarant shall own any lands within the Properties, the Additional Properties, or within the Development Plan, no Declarant's related amendment shall be made to this Master Declaration, any Supplemental Declaration, or to the Articles or Bylaws of the Association unless such amendment is first approved in writing by Declarant. Any amendment shall be deemed to be Declarant related if it does any of the following:

- (a) directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other Owners;
- (b) modifies the definitions provided for by Article I of this Master Declaration in a manner which alters Declarant's rights or status;
- (c) modifies or repeals any provision of Article II of this Master Declaration;
- (d) alters the character and rights of membership as provided for by Article III of this Master Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association;
- (e) alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivisions, public authorities, or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements, or facilities;
- (f) denies the right of Declarant to convey the Common Property or Village Common Property to the Association or any applicable Village Association;
- (g) modifies the basis or manner of assessment or assessment exemptions, as applicable to Declarant or any lands owned by Declarant; or
- (h) alters or repeals any of Declarant's rights, reserved easements, right to grant easements, or any provision applicable to Declarant's rights as provided for by any provision of this Master Declaration or any Supplemental Declaration.

Section 2. Amendments by Declarant. During any period in which Declarant owns any land encumbered by this Master Declaration, Declarant may amend this Master Declaration, the Articles, the Bylaws or any Supplemental Declaration by an instrument in writing filed in the public records of Flagler County, Florida, without the approval of the Association or Village Association,

any Owner or any mortgagee; provided, however, that, with the exception of the annexation of Additional Property to the terms of this Master Declaration, (i) in the event that such amendment materially and adversely alters or changes any Owner's right to the use and enjoyment of his Unit, of the Common Property or Village Common Property as set forth in this Master Declaration or adversely affects the marketability of title to any Unit, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; provided that, if any such Owner is a member of a Village Association, such majority will be deemed to have been obtained with respect to such Village Association Owner's, if the majority of the members of such Village Association approve such amendment; and (ii) in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 2 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagee, if required, and shall be effective upon being filed in the public records of Flagler County, Florida, or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Unit, agrees to be bound by such amendments as are permitted by this Section 2 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Master Declaration or any other instruments relating to the Properties (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any of the Properties, (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any of the Properties, (d) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgages on any of the Properties, or (e) if such amendment is necessary to correct an error, a misleading or ambiguous provision of this Master Declaration or to make certain provisions of the Master Declaration conform with other provisions of this Master Declaration.

Section 3. Amendments Regarding Surface Water or Stormwater Management System.

Any amendment to this Master Declaration, whether by the Owners or Declarant, which materially alters any provision relating to the Surface Water Management System, beyond maintenance in its original condition, including the water management portions of the common areas, must have the prior approval of the St. Johns River Water Management District.

ARTICLE XI.PARTY WALLS OR PARTY FENCES

Section 1. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to each party wall or party fence which is built as part of the original construction and any replacement of improvements in the Properties.

In the event that any portion of any structure, as originally constructed, including any party wall or fence, shall protrude over an adjoining Common Property, Village Common Property, or Residential Unit, such structure, party wall or fence shall not be deemed to be an encroachment upon the adjoining lands, and the affected Owner shall neither maintain any action for the removal of the party wall or fence or projection, nor for damages. In the event there is a protrusion, it shall be deemed that the affected Owner has granted a perpetual non-exclusive easement to the adjoining Owner for continuing maintenance and use of the projection, party wall or fence. The foregoing shall also apply to any replacements of any structures, party walls or fence as the same are construed in conformity with the original structure, party wall or fence.

Section 2. Sharing of Repair and Maintenance. Unless otherwise specified in any Supplemental Declaration, the cost of reasonable repair and maintenance of a party wall or party fence shall be shared equally by the Owners who make use of the wall or fence in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall or fence must restore it, and if other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article, each party shall mutually agree upon a single

arbitrator, or in the absence of such agreement on a single arbitrator, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. The decision of the applicable arbitrator or arbitrators shall not, however, be binding and conclusive upon the parties and any party to the dispute shall thereafter have the right to institute any action or proceeding, at law or equity, which he deems necessary or desirable.

## ARTICLE XII.

### COVENANTS COMMITTEE

Section 1. Committee. The Board shall serve as the Covenants Committee or may appoint at least two (2) members of the Board to serve as the Covenants Committee, at the pleasure of the Board. Acting in accordance with the provisions of this Master Declaration, the Bylaws, Articles, and any resolutions the Board may adopt, the Covenants Committee shall be the hearing tribunal of the Association relative to alleged infractions of this Master Declaration, the Bylaws, the Articles, and the rules and regulations of the Association (but not the Planning Criteria). Subject to compliance with the provisions of Section 2 hereof, upon the violation of this Master Declaration, the Bylaws, the Articles, or any rules and regulations duly adopted hereunder, the Board shall have the power (i) to impose reasonable monetary fines (not exceeding One Hundred and No/100 Dollars (\$100.00) per day for each day that the violation continues and not exceeding \$1,000.00 in the aggregate per violation) which shall constitute an equitable charge and a continuing lien upon the Unit, the Owners, occupants, or guests of which are guilty of such violation; (ii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the Common Property and Village Common Property; or (iii) to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owners or the family, guests, or tenants of his co-Owners. Notwithstanding anything herein, however, an Owner's pedestrian and vehicular access to its property over private roads and streets constituting Common Property (including, but not limited to, the right to park), if any, will not be terminated or suspended hereunder. Any suspension of rights hereunder may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

Section 2. Hearing Procedure. The Board shall not impose a fine, suspend voting, or infringe upon any other rights of a Member or other occupant of the Properties for violations of this Master Declaration, the Bylaws, the Articles, or the rules and regulations unless and until the following procedure is followed:

(a) Demand to Cease and Desist. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

(i) the alleged violation;

(ii) the action required to abate the violation; and

(iii) a time period of not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Master Declaration, the Bylaws, the Articles, or rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) Notices. At any time within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board or its delegate shall serve the violator with written notice of a hearing to be held by the Covenants Committee in executive session. The notice shall contain:

- (i) the nature of the alleged violation;
- (ii) the time and place of the hearing, which time shall not be less than fourteen (14) days from the giving of the notice;
- (iii) an invitation to attend the hearing and produce a statement, evidence, and witness on his behalf; and
- (iv) the proposed sanction to be imposed.

(c) Hearing. The hearing shall be held by the Covenants Committee in executive session pursuant to the notice and the Owner shall be provided a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. No sanction shall be imposed under this Article XII unless approved by a majority of the Covenants Committee. This Article XII shall not apply to failures to pay in a timely manner assessments levied by the Association.

### ARTICLE XIII.

#### DURATION AND TERMINATION

The reservations, covenants, conditions, restrictions, easements, charges and liens of this Master Declaration and of each Supplemental Declaration incorporating Additional Properties shall

run with and bind the title to the Properties, and shall inure to the benefit of, be enforceable by, and bind Declarant, the Association and each Owner, their respective legal representatives, heirs, successors and assigns, for a period of fifty (50) years from the recording of this Master Declaration, after which time this Master Declaration shall be automatically extended for successive periods of ten (10) years. This Master Declaration may be terminated at any time by recordation of an instrument signed by the then holders of eighty percent (80%) of the votes in the Association and their first mortgagees agreeing to terminate this Master Declaration; provided, however, that so long as the Declarant shall own lands within the Properties, no such termination will be effective without the written consent and joinder of the Declarant.

#### ARTICLE XIV.

#### ENFORCEMENT

Section 1. Remedies. If any person or entity shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for Declarant, any Owner or the Association or Village Association (i) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate any such covenant or restriction, or (ii) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate any such covenant or restriction, for the purpose of preventing, or enjoining all or any such violations or attempted violations. The remedies contained in this provision shall be construed as cumulative of all other remedies now or hereafter provided by law or this Master Declaration. The failure of Declarant, its successors or assigns, or the Association, the Village Association, or an Owner, to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior to or subsequent thereto. Should Declarant or the Association or Village Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the non-prevailing party. Inasmuch as the enforcement of the provisions of this Master Declaration, the Bylaws, the Articles, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, Village Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association or Village Association for or on account of any failure to bring any action on account of any violation or breach, of the provisions of this Master Declaration, the Bylaws, the Articles, or any rules and regulations of the Association by any person, however long continued.



Section 2. Lessees to Comply with Master Declaration, Articles and Bylaws-Effect on Non-Compliance. All tenants shall be subject to the terms and conditions of this Master Declaration, the Bylaws, the Articles, and the rules and regulations promulgated thereunder as though such tenant were an Owner. Each Owner agrees to cause his lessee, occupant, or persons living with such Owner or with his lessee to comply with the Master Declaration, Bylaws, Articles and the rules and regulations promulgated thereunder, and is responsible and liable for all violations and losses caused by such tenants or occupants, notwithstanding the fact that such occupants of the Unit are also fully liable for any violation of the documents and regulations. In the event that a lessee, occupant, or person living with the lessee violates a provision of the Master Declaration, Bylaws, Articles or rules and regulations, the Board shall have the power to bring an action or suit against the lessee to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity.

#### ARTICLE XV.

#### SINGLE FAMILY PARCELS

The portion of the Properties described on Exhibit "C" attached hereto, are hereby designated as the "Single Family Parcel." The Single Family Parcel is also hereby designated by the Declarant as a separate Village known as the Single Family Parcel Village. Declarant elects not to establish a Village Association at this time for the Single Family Parcel, but reserves the right to do in the future as provided in this Master Declaration. The following additional covenants and restrictions shall apply only to the Single Family Parcel:

Section 1. Assessments. The Single Family Parcel is subject to Annual, Special, Individual and Working Capital Assessments to be levied from time to time by the Association in accordance with this Master Declaration. In addition, as a Village, the Single Family Parcel Village is subject to Village Assessments. The initial Annual Assessments applicable to the Single Family Parcel is Seven Hundred Ninety Two and No/100 Dollars (\$792.00) per Residential Unit per year. The initial Annual Assessments and Village Assessment as to each Residential Unit in the Single Family Parcel commenced effective as of the recording of the plat of Harbor Village Marina. The preceding sentence to the contrary notwithstanding, Declarant shall not be required to pay any assessments as to Residential Units in the Single Family Parcel owned by it during the time that Declarant is subsidizing the Association budget in accordance with Article VI, Section 10 hereof. There shall be two levels of annual Village Assessments imposed upon the Residential Units in the Single Family Parcel. One Village Assessment level shall apply to Residential Units that include completed dwellings (as established by issuance of a certificate of occupancy by the applicable governmental authority) and the other Village Assessment level shall apply to Residential Units without completed dwellings. The amount of each level of annual Village Assessment shall be determined by the Board of the Association based upon a consideration of the relative costs of providing landscape maintenance to each such class of Residential Unit. The initial Village Assessment applicable to Residential Units in the Single Family Parcel is One Thousand Three Hundred Twenty and No/100 Dollars (\$1320.00) per Residential Unit per year without a completed

dwelling and Three Thousand One Hundred Eighty and No/100 Dollars (\$3180.00) per Residential Unit per year with a completed dwelling. Annual Assessments and Village Assessments are subject to change in accordance with the terms of the Master Declaration.

Section 2. Common Property and Village Common Property. Parcel K, Parcel L, Parcel M, Parcel N, Jungle Hut Road West, and Yacht Harbor Drive from State Highway A1A up to the southern boundary of Lot 184, all as shown on the Plat of Harbor Village Marina, is hereby designated as Common Property. All pavement, curbs, guardhouse and related security services, drainage features, signs, islands, shoulders, medians, sprinklers, landscape material and other improvements within the aforementioned right-of-way shall be operated, lighted, irrigated, maintained, repaired and replaced by the Association at Common Expense. Parcel A, Parcel B, Parcel C, Parcel D, Parcel E, Parcel F, Parcel G, Parcel H, Parcel I, Parcel J, Parcel O, Parcel P, Parcel Q, Parcel U, Parcel V, Parcel W, Parcel X, Parcel Y, Admirals Point, Cutter Court, Schooner Circle, Spinaker Circle, Armada Court, Admirals Point South, and all portions of Yacht Harbor Drive north of the southern boundary of Lot 184, all as shown on the Plat of Harbor Village Marina, is hereby designated as Village Common Property for the Single Family Parcel Village and shall be operated, maintained, repaired and replaced by the Association at Village Common Expense of the Single Family Parcel Village. The designated uses for the Common Property and Village Common Property within the Single Family Parcel shall be as set forth on the subdivision plat of Harbor Village Marina or as provided in the Master Declaration, the Articles, Bylaws, or rules and regulations of the Association. The above described designations of the Common Property and Village Common Property may be expanded, supplemented, or withdrawn by the Declarant from time to time as provided in this Master Declaration.

Section 3. Areas of Common Responsibility. No additional Areas of Common Responsibility have been established by the Declarant at this time in connection with the Single Family Parcel.

Section 4. Landscape Maintenance. Upon the exterior of each Residential Unit in the Single Family Parcel Village, the Association shall mow the lawn, trim trees and bushes, fertilize, replace dead, damaged or diseased landscape material, irrigate and arrange exterior pest control, all as needed in the opinion of the Board and at the level of maintenance established from time to time by the Board. The expenses incurred from time to time for the services to be provided by the Association pursuant to this subparagraph shall constitute Village Common Expenses to be charged to, and to be paid by, only the Owners of Residential Units in the Single Family Parcel Village. At the option of the Board, there may be one meter for the irrigation system servicing the Single Family Parcel Village Common Property.

Section 5. Additional Covenants and Restrictions. The following additional covenants and restrictions are imposed on the Single Family Parcel:

(a) One Dwelling per Lot. No structure shall be constructed on any Lot other than one (1) detached single-family dwelling and such appurtenant improvements as may be approved by the ARB.

(b) Minimum Square Footage Requirement. All dwellings constructed on Lots 1 through 184, inclusive, in the Single Family Parcel shall be a minimum of two (2) story design with a minimum of one thousand eight hundred (1,800) square feet of heated and air conditioned space with a maximum building height of fifty-five (55) feet from the elevation of the adjacent roadway curbing.

Section 6. Sod or Seed. Each Owner of a Lot must sod or seed his or her Lot pursuant to the requirements of the ARB, regardless of whether or not the Lot has been improved with a dwelling.

## ARTICLE XVI.

### HAMMOCK BEACH CLUB PROPERTY

Section 1. Hammock Beach Club Property. Notwithstanding anything to the contrary set forth in or which may otherwise be implied from this Master Declaration, the Articles, the Bylaws or the rules and regulations of the Association, neither membership in the Association nor ownership of any Unit in the Properties shall grant or convey any interest in or right to use any of the Hammock Beach Club Property, including any portion thereof located within the Properties. The Hammock Beach Club Property is privately owned and is not a part of the Common Property or Village Common Property. The right or privilege to use the Hammock Beach Club Property shall be determined in the sole and absolute discretion of owner and/or operator of such Hammock Beach Club Property, subject to the terms, conditions and rules enacted from time to time by the owner and/or operator thereof, subject to any fees and charges imposed from time to time by such owner or operator, and subject to availability. Ownership of any Unit or membership in the Association does not create, grant or convey any vested right or easement, prescriptive or otherwise, to use or to continue to use the Hammock Beach Club Property or the facilities at this or any time, unless approved by the owner and/or operator as set forth above. The owner and/or operator of the Hammock Beach Club Property has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom these facilities shall be used, including, without limitation, making these facilities available for use by members of the general public. By way of example, but not limitation, the owner and/or operator of the Hammock Beach Club Property shall have the right to approve users and determine eligibility for use, to reserve use rights, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the facilities, to transfer any or all of the Hammock Beach Club Property or the operation thereof to anyone, including, without limitation, a member-owned or equity club, and on any terms, to limit the availability of use privileges, and to require the payment of a purchase price, membership

contribution, initiation fee, membership deposit, dues, use charges and other charges for use privileges.

Section 2. Limitation. No Owner shall have any right to trespass on or over any part of the Hammock Beach Club Property or to use the Hammock Beach Club Property in any manner whatsoever unless the Owner is a member, licensee or guest of the Club at Hammock Beach, and then only to the extent permitted by the rules and regulations governing such members or guests. Declarant and the Hammock Beach Club Property Owner make no representations, guaranties, commitments, or promises that the Hammock Beach Club Property will ever be improved with any recreational facilities or operated as contemplated. Declarant and the Hammock Beach Club Property Owner makes no representations or warranties as to the type, amount, nature, quality or fitness for intended use of any of the recreational facilities constructed or to be constructed by the owner or operator of the Hammock Beach Club Property.

Section 3. Rights of Access, Parking and Stormwater Drainage. The owner and operator of the Hammock Beach Club Property, and their respective employees, agents, contractors, invitees, licensees, concessionaires, and designees and the members and users of the Club at Hammock Beach (regardless of whether any of the foregoing are Owners hereunder) shall at all times have a right and non-exclusive easement of access and use over all roadways located within the Properties (including any Common Property and Village Common Property) to travel to and from the Hammock Beach Club Property and further over those portions of the Common Property and Village Common Property reasonably necessary for the use, operation, maintenance, repair and replacement of the Hammock Beach Club Property and the improvements located thereon. The Hammock Beach Club Owner and members of the Club at Hammock Beach (regardless of whether such persons are Owners hereunder), their guests and invitees and the employees, agents, contractors, invitees, licensees, concessionaires and designees shall at all times have a right and a non-exclusive easement upon, and the right, privilege and license of using any or all of the Common Property and Village Common Property, including, without limitation, any streets, roadways, surface water management systems, parking lots, sidewalks and walkways in the Properties, in connection with and in support of operations and activities on the Hammock Beach Club Property. The Owner of the Hammock Beach Club Property shall be responsible for operation, maintenance and repair of all of the Hammock Beach Club Property and all improvements from time to time located thereon. Without limiting the generality of the foregoing, members of the Club at Hammock Beach and members of the public admitted by ticket, pass, permit or as otherwise established by the owner or operator of the Hammock Beach Club Property, shall have the right of ingress and egress over all streets, roadways, and parking areas located within the Properties at reasonable times in connection with and in support of operations and activities on the Hammock Beach Club Property.

Section 4. Limitation on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Hammock Beach Club Property Owners, no amendment to this Article, and no amendment to any other provisions of the Master Declaration in derogation hereof,

may be made without the written approval thereof by the owner of the Hammock Beach Club Property.

Section 5. Applicability. The Declarant, the Association and the Hammock Beach Club Owner shall have all enforcement powers afforded by this Master Declaration and at law to enforce those Articles on behalf of the owner of the Hammock Beach Club Property. This shall not be deemed to limit the right of the Declarant, the Association or the Hammock Beach Club Property Owner to enforce any other rights which the Hammock Beach Club Property Owner may have under the terms and conditions of the Articles and Bylaws of the Association.

Section 6. Assumption of Risk and Indemnification. Each Owner, by its purchase of a Lot or Unit, expressly assumes the risks associated with the Hammock Beach Club Property (regardless of whether the Owner is using the Hammock Beach Club Property) and agrees that neither Declarant, the Hammock Beach Club Property Owner, the Association, Village Association, nor any of their affiliates or agents, nor any other entity designing, constructing, owning or managing the Hammock Beach Club Property planning or constructing the Owner's Lot or Unit shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution or other visual or audible offenses, as trespass or any other alleged wrong or entitlement to remedy barred upon, due to, arising from or otherwise related to the proximity of the Owner's Unit or Common Property to the Hammock Beach Club Property.

Section 7. Enforcement. Declarant, the Hammock Beach Club Property Owner and the Association may enforce any of the provisions of this Article XVI by injunction or other equitable remedy or by an action at law for damages or both, and the prevailing party shall be entitled to recover its attorneys' fees and expenses.

## ARTICLE XVII.

### DISCLOSURES

Section 1. Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit.

Section 2. Natural Areas. The Properties (including but not limited to any Preserve Areas described in Article IX, Section 29) and certain adjacent property known as the Malacompra Greenway, contain a number of manmade, natural, and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, including, without limitation, insects, venomous and non-venomous snakes and other reptiles, alligators, and other animals, some of which

pose hazards to persons or pets coming in contact with them. By acceptance of title to his or her Unit, each Owner and every person entering the Properties, including, but not limited to families, tenants, guests, invitees, servants, and agents of each Owner, (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movements within or through the Properties and the Malacompra Greenway; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Properties and the Malacompra Greenway. Neither the Association, Declarant, any predecessor Declarant, any builder, nor the members, partners, affiliates, officers, directors, agents, or employees of any of the foregoing, shall have any duty to take action to control, remove, or eradicate any plant or wildlife in the Properties and the Malacompra Greenway, nor shall they have any liability for any injury resulting from the presence, movements, or propagation of any plant or wildlife within or through the Properties and the Malacompra Greenway. The natural areas described above may also contain creeks, ponds, or intermittent pools of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat.

Section 3. Naturally and Artificially Occurring Arsenic Conditions. Arsenic is known to naturally occur in soil throughout the State of Florida. There are several counties in Florida (one of which is Flagler County, where the Properties are located) which have experienced naturally occurring levels of arsenic in the soil which exceed the state guidelines. In addition to the naturally occurring arsenic, there are some properties within Florida that contain arsenic as a result of local, state, and federal programs conducted throughout the State of Florida from 1906 through 1961. As a result of those programs, in excess of 3,200 cattle-dipping vats were constructed within properties throughout the State of Florida in order to facilitate the prevention, suppression, control, or eradication of the disease commonly known as tick fever by eradicating the cattle fever tick, the arthropod vector organisms responsible for transmission of the disease. Participation by a property owner in the cattle fever tick eradication program was mandated by state law. Most cattle-dipping vats were constructed with public funds and operated under local, state, and federal government supervision and control. Throughout most of the tick eradication program, the state established criteria for chemical solutions to be used in vats which included arsenic. As a result of these previous government mandates, the State of Florida adopted Section 376.306 Florida Statutes, to provide any private owner of property in the State of Florida upon which cattle-dipping vats are located shall not be liable to the state under state law, or to any other person seeking to enforce state law, for any costs, damages, or remediation of any substances or derivatives thereof that were used in the vat. While there is no state registration requirement for these cattle-dipping vats, and therefore the location of these vats is generally unknown, a former cattle-dipping vat is known to exist within the Malacompra Greenway adjacent to the Properties. Because of the location of this vat, Declarant has implemented measures to reduce or minimize actual, or potential, natural and artificial levels of arsenic within the Malacompra Greenway and the Properties. By acceptance of title to his or her Unit, each Owner and every person entering the Properties, including, but not limited to families, tenants, guests, invitees, servants, and agents of each Owner, acknowledges and agrees that, notwithstanding the Declarant's efforts to implement measures to reduce the levels or arsenic within

the Properties, arsenic may still exist in levels which exceed the state guidelines, and accordingly waives any and all rights it may have in and to any and all claims which may arise as a result of past or present, naturally or artificially occurring arsenic within the Properties.

ARTICLE XVIII.

MISCELLANEOUS

Section 1. Number and Gender. Reference to the singular shall include reference to the plural and the plural shall include the singular, as indicated by the context of use. Reference to any gender shall include reference to all genders.

Section 2. Severability. The invalidation of any provision or provisions of this Master Declaration shall not affect or modify any one of the other provisions which shall remain in full force and effect.

Section 3. Headings. The paragraph headings are for reference purposes only and shall not in any way affect the meaning, content or interpretation of this Master Declaration.

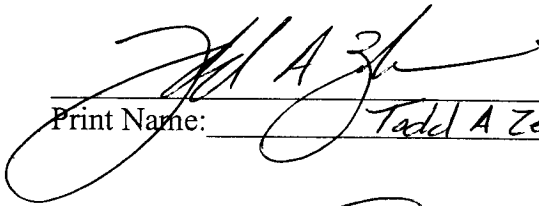
Section 4. Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses, as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Units. All notices to the Association shall be delivered or sent in care of Declarant at 5 Blue Heron Lane, Palm Coast, Florida 32137, or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant at 5 Blue Heron Lane, Palm Coast, Florida 32137, or to such other address as Declarant may from time to time notify the Association. Notices to mortgagees shall be delivered or sent to such addresses as such mortgagees specify in writing to the Association. Notices to any other person or persons entitled to same hereunder shall be delivered or sent to such address or addresses as such person or persons specify, from time to time, in writing to the sender, or, in the absence thereof, to such address or addresses as shall be, in the exercise of reasonable judgment by the sender, reasonably expected to be received by such person or persons.

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IN WITNESS WHEREOF, Declarant has caused these presents to be executed in its name and its seal to be affixed hereto as of the day and year first above written.

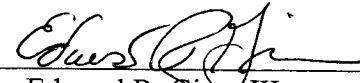
Signed, sealed and delivered  
in the presence of:

**GINN-LA MARINA LLLP**, a Georgia limited liability limited partnership, which is doing business in the state of Florida as **GINN-LA MARINA LLLP, Ltd.**

  
Print Name: Tadd A Zehner

By: **GINN-MARINA GP, LLC**, a Georgia limited liability company, its general partner

  
Print Name: GREG WILMORE

By:   
Edward R. Ginn, III  
Its Manager



STATE OF FLORIDA )  
 ) SS:  
COUNTY OF FLAGLER )

The foregoing Master Declaration of Covenants, Conditions and Restrictions for Harbor Village Marina was acknowledged before me this 26 day of FEBRUARY, 2002 by Edward R. Ginn, III, the Manager of Ginn-Marina GP, LLC, a Georgia limited liability company, the general partner of Ginn-LA Marina, LLLP, a Georgia limited liability limited partnership, doing business in the state of Florida as Ginn-LA Marina, LLLP, Ltd., on behalf of the limited liability limited partnership. He [] is personally known to me or [] produced \_\_\_\_\_ as identification.

*Linda K. Langevin*

Signature of Notary Public  
Printed Name of Notary Public  
Notary Public, State of Florida  
Commission Number: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_



**JOINDER AND CONSENT BY MORTGAGEE**

**KNOW ALL MEN BY THESE PRESENTS:**

**THAT COLONIAL BANK**, a Alabama corporation (the "Mortgagee"), having an office at 1899 Clyde Morris Blvd., Daytona Beach, Florida 32119, the owner and holder of that certain mortgage dated January 11, 2002, recorded in Official Records Book 795, page 888, of the Public Records of Flagler County, Florida, ("the Mortgagee") encumbering the Property described in the foregoing Master Declaration of Covenants, Conditions and Restrictions for Harbor Village Marina, (the "Master Declaration"), by the execution hereof, hereby joins into and consents to the placing of the Master Declaration on the Properties described in **Exhibit "C"** to the Master Declaration, and further covenants and agrees that the lien of the Mortgage is and shall be subordinate to the Master Declaration as if the Master Declaration had been executed and recorded prior to the execution, delivery or recordation of the Mortgage.

**IN WITNESS WHEREOF**, the Mortgagee has executed this Joinder and Consent by Mortgagee this 20<sup>th</sup> day of February, 2002.

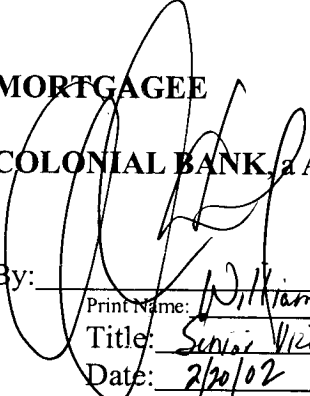
Signed sealed and delivered  
in the presence of:

Print Name: Joan M. Wilms  
JOAN M. WILMS

Print Name: Megan M. Wood  
megan m wood

**MORTGAGEE**

**COLONIAL BANK**, a Alabama corporation

By:   
Print Name: William McCracken  
Title: Senior Vice President  
Date: 2/20/02, 2002



**EXHIBIT "A"**  
**(THE "ARTICLES OF INCORPORATION")**

ARTICLES OF INCORPORATION

OF

HARBOR VILLAGE MARINA PROPERTY OWNER'S ASSOCIATION, INC.

In compliance with the requirements of Florida Statutes, Chapter 617, the undersigned incorporator has executed, adopted and caused to be delivered for filing these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

ARTICLE I

NAME OF CORPORATION

The name of the corporation is HARBOR VILLAGE MARINA PROPERTY OWNER'S ASSOCIATION, INC. (hereinafter called the "Association").

ARTICLE II

PRINCIPAL OFFICE OF THE ASSOCIATION

The principal place of business and the mailing address of the Association is located at 5 Blue Heron Lane, Palm Coast, Florida 32137.

ARTICLE III

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Association is 5 Blue Heron Lane, Palm Coast, Florida 32137, and the name of the initial registered agent at that address is Robert F. Masters, II.

ARTICLE IV

DEFINITIONS

Unless otherwise provided herein to the contrary, all terms used in these Articles shall have the same definitions and meanings as those set forth in that certain Master Declaration of Covenants, Conditions and Restrictions for Harbor Village Marina recorded or to be recorded in the Public Records of Flagler County, Florida, as it may from time to time be amended (hereinafter called the "Declaration").

## ARTICLE V

PURPOSE AND POWERS OF THE ASSOCIATION

The Association does not contemplate pecuniary gain or profit. The Association shall not pay dividends and no part of any income of the Association shall be distributed to its Members, directors or officers. The Association shall have all the powers of a not-for-profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in these Articles, the Bylaws, or the Declaration. The Association shall have the power and duty to do any and all lawful things which may be authorized, assigned, required or permitted to be done by the Declaration, any Supplemental Declaration, any amendment to the Declaration, these Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvements of the Properties, Areas of Common Responsibility, Common Property and Village Common Property within its jurisdiction. Unless otherwise specifically prohibited, any and all functions, duties and powers of the Association shall be fully transferable, in whole or in part, to any Village Association, another not-for-profit property owners association incorporated pursuant to the applicable provisions of Florida Statutes Chapter 617 or its replacement, developer, management agent, governmental unit, community development district, public body, or similar entity.

## ARTICLE VI

MEMBERSHIP

Section 1. Members. Every person or entity who is a record Owner of a fee simple title to any Unit in the Properties shall be a Member of the Association. Declarant shall also be a Member for so long as Declarant owns any portion of the Properties. Notwithstanding anything else to the contrary set forth in this Article, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. The Association membership of each Owner (other than Declarant) shall be appurtenant to and may not be separated from the Unit giving rise to such membership, and shall not be transferred except upon the transfer of title to said Unit and then only to the transferee of title thereto. Any prohibited separate transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof. A Village Association shall not have any membership in the Association.

Section 2. Classes. The Association shall have two (2) classes of voting membership:

(a) Class "A". Class "A" Members shall be all Owners of Units, with the exception of Declarant for so long as Declarant shall be a Class "B" Member. Class "A" Members shall be entitled on all issues to one (1) vote for each Equivalent Unit assigned by the Declaration to the Unit in which they hold the interest required for membership.

(b) Class "B". The Class "B" Member(s) shall be Declarant and each successor of Declarant who takes title to any unimproved portion of the Properties for the purpose of development and sale of Units and to whom Declarant, in its sole discretion specifically assigns in writing one or more of the Class "B" votes. Upon the execution of these Articles, the Class "B" Member shall be entitled to four (4) votes for each Equivalent Unit assigned to the Class "A" Members, provided the Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

(i) When the Declarant no longer owns any portion of the Properties, the Additional Properties, or any lands within the Development Plan; or

(ii) When, in its discretion, Declarant and/or its designated successors voluntarily relinquishes the right to vote as the Declarant/Class B Member in Association matters.

From and after the happening of any one of these events, Declarant shall call a meeting as provided in the Bylaws for special meetings to advise the Association membership of the termination of Class "B" status. The Class "B" members shall cast on all issues their votes as they among themselves determine.

Until such time as the Class A Members exist, the Declarant as the Class B Member shall hold a minimum of four (4) votes in Association matters.

Section 3. Declarant Veto. From and after the termination of the Class "B" membership, Declarant shall have a veto power over all actions of the Association and Board of Directors of the Association. This power shall expire when the Declarant or its specifically designated successors no longer owns any portion of the Properties, the Additional Properties, or any portion of the lands included within the Development Plan, or twenty (20) years from the date of recording of the Declaration, whichever occurs first. The veto shall be exercised as follows:

No action authorized by the Association or the Board of Directors shall become effective, nor shall any action, policy or program be implemented, until and unless:

(a) Declarant shall have been given written notice of each meeting of the Members and of the Board by certified mail, return receipt requested or by personal delivery, at the address it has registered from time to time with the Secretary of the Association, which notice otherwise complies with the terms of the Bylaws as to regular and special meetings of the Members and Board, and which notice shall set forth with reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall have been given the opportunity at each such meeting, if Declarant so desires, to join in, or to have its representatives or agents join in, discussion of any prospective action, policy or program authorized by the Board, the Association officers, or Association membership, and to be taken by said Board, the officers or agents of the Association,

or any individual Member of the Association (if Association or Board approval is necessary for said Member's action). Except as set forth in subsection (c) below, Declarant veto must be exercised by Declarant, its representatives, or agents at or before the meeting to consider proposed action. The veto power shall not include the authority to require any affirmative action on behalf of the Board or the Association; and

(c) If any action, policy or program is to be implemented by prior consent without the formality of a meeting, then Declarant shall be provided a written notice and description of the proposed action, policy or program at least ten (10) days in advance of such implementation, and Declarant shall have ten (10) days after receipt of such notice to exercise its veto.

Section 4. Multiple Owners. Each vote in the Association must be cast as a single vote as provided in Section 3.3 of the Bylaws, and fractional votes shall not be allowed. In the event that joint or multiple Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote on behalf of a particular Unit, it shall thereafter be conclusively presumed for all purposes that he or she was or they were acting with the authority and consent of all other Owners thereof. In the event more than the appropriate number of votes are cast for a particular Unit, none of said votes shall be counted and said votes shall be deemed void.

**ARTICLE VII**

BOARD OF DIRECTORS

The affairs of this Association shall be managed and administered by a Board of Directors consisting of not less than three (3) members. Initially, the Board shall consist of not less than three (3) members, with the number in subsequent years to be determined by the members of the Board; provided that there shall always be an odd number of directorships created. Anything in these Articles to the contrary notwithstanding, until such time as the Class B membership is terminated, or at such earlier date as may be selected by Declarant, Declarant shall be entitled to designate all members of the Board. The names and addresses of persons who are to act in the capacity of director until appointment or election of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Todd Zehner	5 Blue Heron Lane Palm Coast, Florida 32137
Robert F. Masters, II	5 Blue Heron Lane Palm Coast, Florida 32137
Greg Ulmer	5 Blue Heron Lane Palm Coast, Florida 32137



Interim vacancies in the Board of Directors appointed by Declarant shall be filled by Declarant, unless Declarant voluntarily relinquishes the right to do so in writing. Any Directors elected by the Members of the Association shall be filled by the majority of the remaining Directors, and any such appointed Director shall serve for the remaining term of his predecessor. After Declarant relinquishes its right to appoint the Board of Directors, the Members shall elect the directors by majority vote, for staggered terms of three (3) years each. To create the staggered terms, one post shall become vacant in one (1) year and a successor director shall be elected. The second post shall be deemed vacant at the end of the second year, and a successor director shall be elected. The third post shall be deemed vacant at the end of the third year, and a successor director shall be elected. All successor directors shall serve for terms of three (3) years each. In the event that the number of people comprising the Board of Directors is changed, such change in number shall be implemented in such a manner as to have as nearly equal in number as possible the number of directors whose terms expire in any given year.

**ARTICLE VIII**

OFFICERS

The day-to-day affairs of the Association shall be administered, subject to the direction and authority of the Board of Directors, by the officers of the Association, which may include a President, Vice President, Secretary and Treasurer and such other officers as permitted by the Bylaws. The officers shall be appointed by the Board of Directors and they shall serve at the pleasure of the Board of Directors. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

	<u>NAME</u>	<u>ADDRESS</u>
President:	Todd Zehner	5 Blue Heron Lane Palm Coast, Florida 32137
Vice President:	Robert F. Masters, II	5 Blue Heron Lane Palm Coast, Florida 32137
Secretary:	Greg Ulmer	5 Blue Heron Lane Palm Coast, Florida 32137
Treasurer:	Greg Ulmer	5 Blue Heron Lane Palm Coast, Florida 32137

ARTICLE IX

DURATION

The corporation shall exist perpetually.

ARTICLE X

AMENDMENTS

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

Section 1. Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapters 617 and 720, *Florida Statutes*. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

Section 2. Adoption. Amendments shall be proposed and adopted in the manner provided in Chapters 617 and 720, *Florida Statutes*, provided such amendments may be adopted by the affirmative vote of a majority of the voting interests of the Association.

Section 3. Developer Amendments. Notwithstanding anything herein contained to the contrary, to the extent lawful, Declarant may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by Declarant alone.

Section 4. Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of Flagler County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded.

Section 5. Limitations. No amendment shall be made that is in conflict with the Declaration. So long as Declarant shall own any lands within the Properties, the Additional Properties, or within the Development Plan, no Declarant related amendment shall be made to the Declaration, any Supplemental Declaration, or to the Articles or Bylaws of the Association unless such amendment is first approved in writing by Declarant. Any amendment shall be deemed to be Declarant related if it does any of the following;

- (a) directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other owners;
- (b) modifies the definitions provided for by Article I of the Declaration in a manner which alters Declarant's rights or status;

- (c) modifies or repeals any provision of Article II of the Declaration;
- (d) alters the character and rights or membership as provided for by Article III of the Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association;
- (e) alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivision, public authorities or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements or facilities;
- (f) denies the right of Declarant to convey to the Association Common Property or Village Common Property;
- (g) modifies the basis or manner of assessment as applicable to Declarant or any lands owned by Declarant;
- (h) alters or repeals any of Declarant's rights, reserved easements, right to grant easements, or any provision applicable to Declarant's rights as provided for by any provision of the Declaration, Supplemental Declaration, the Bylaws or these Articles.

## ARTICLE XI

### BYLAWS

The Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded in the manner provided in the Bylaws.

## ARTICLE XII

### INDEMNIFICATION OF OFFICERS AND DIRECTORS

Section 1. The Association shall defend, indemnify and hold harmless any person of the Association who is made a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceedings, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, officer, committee member, employee or agent of the Association:

- (a) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with an action, suit, or proceeding (other than one by or in the right of the Association), if he acted in good faith, and, with respect to any criminal action or proceedings, he had no reasonable cause to believe his conduct was unlawful; and

(b) From and against expenses (including reasonable attorneys' fees for pretrial, trial, or appellate proceedings) actually and reasonably incurred by him in connection with the defense or settlement of an action or suit by or in the right of the Association, if he acted in good faith.

Section 2. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, or, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

Section 3. Notwithstanding any other provision hereof to the contrary, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association.

Section 4. Any indemnification under Section 1 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director or officer, committee member, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit, or proceeding, or (b) if such quorum is not obtainable, or even if obtainable and a quorum of disinterested Directors so directs, by a majority vote of Members of the Association.

Section 5. Expenses incurred in defending a civil or criminal action, suit, or proceeding shall be paid by the Association from time to time as incurred rather than only after the final disposition of such action, suit, or proceeding. Payment of such expenses shall be authorized by the Board of Directors in each specific case only after receipt by the Association of an undertaking by or on behalf of the director or officer to repay such amounts if it shall later develop that he is not entitled to be indemnified by the Association.

Section 6. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which the Association's directors, officers, committee members, employees or agents may be entitled under the Association's bylaws, agreement, vote of Members or disinterested directors, or otherwise, both as to actions in their official capabilities and as to action in another capacity while holding such offices or positions, and shall continue as to a person who has ceased to be a director, officer, committee member, agent or employee and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7. Notwithstanding the foregoing provisions, indemnification provided under this Article shall not include indemnification for any action of a director, officer, committee member, agent or employee of the Association for which indemnification is deemed to be against public policy. In the event that indemnification provided under this Article is deemed to be against public policy, such an event shall not invalidate or affect any other right or indemnification herein provided.

Section 8. The Association shall have the power, but shall not be obligated, to purchase and maintain indemnification insurance to provide coverage for any liability asserted against any director, officer, committee member, agent or employee of the Association in any of his capacities as described in Section 1, whether or not the Association would have the power to indemnify him or her under this Article.

Section 9. Any person requesting indemnification shall first look to any insurance maintained by the Association for indemnification against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement (as described above). The Association shall be obligated to indemnify such person (if entitled to indemnification by the Association) only to the extent such insurance does not indemnify such person. In the event that any expenses, judgments, fines, or amounts paid in settlement are paid pursuant to insurance maintained by such Association, the Association shall have no obligation to reimburse the insurance company.

**ARTICLE XIII**

INCONSISTENCY

In the event of any inconsistency between the terms and provisions contained in the Declaration and those contained in these Articles of Incorporation, the terms and provisions of the Declaration shall prevail.


**ARTICLE XIV**

INCORPORATOR

The name and street address of the sole incorporator to these Articles of Incorporation is as follows:

Robert F. Masters, II  
5 Blue Heron Lane  
Palm Coast, Florida 32137

**IN WITNESS WHEREOF**, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the sole incorporator of this Association, has executed these Articles of Incorporation this 26<sup>th</sup> day of February 2002.

  
Robert F. Masters, II  
Incorporator



**CERTIFICATE DESIGNATING REGISTERED AGENT FOR  
SERVICE OF PROCESS**

IN COMPLIANCE WITH SECTION 617.0501, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED:

HARBOR VILLAGE MARINA PROPERTY OWNER'S ASSOCIATION, INC., DESIRING TO ORGANIZE UNDER THE LAWS OF THE STATE OF FLORIDA WITH ITS PRINCIPAL PLACE OF BUSINESS AT 5 BLUE HERON LANE, PALM COAST, FLORIDA 32137, HAS NAMED ROBERT F. MASTERS, II, WHOSE ADDRESS IS 5 BLUE HERON LANE, PALM COAST, FLORIDA 32137, AS ITS REGISTERED AGENT TO ACCEPT SERVICE OF PROCESS WITHIN THE STATE OF FLORIDA. SAID REGISTERED AGENT'S ADDRESS IS THE CORPORATION'S REGISTERED OFFICE.

**HARBOR VILLAGE MARINA  
PROPERTY OWNER'S ASSOCIATION,  
INC.**

By: Robert F. Masters, II  
Robert F. Masters, II  
Incorporator  
Dated: Feb 26, 2002

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE NAMED CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES.

Robert F. Masters, II  
Robert F. Masters, II  
Registered Agent  
Dated: Feb 26, 2002

**EXHIBIT "B"**  
**(THE "BYLAWS")**



## OF

HARBOR VILLAGE MARINA PROPERTY OWNER'S ASSOCIATION, INC.

1. Definitions. Capitalized terms used in these Bylaws shall have the same definitions and meanings as are set forth for those terms in the Master Declaration of Covenants, Conditions and Restrictions for Harbor Village Marina as recorded or to be recorded in the Public Records of Flagler County, Florida, as amended from time to time (the "Declaration").

2. Identity. These are the Bylaws of HARBOR VILLAGE MARINA PROPERTY OWNER'S ASSOCIATION, INC., a corporation not-for-profit organized pursuant to Chapter 617, *Florida Statutes* (the "Association").

2.1 Office. The office of the Association shall be located at 5 Blue Heron Lane, Palm Coast, Florida 32137, or at such other place as may be designated from time to time by the Board of Directors.

2.2 Fiscal Year. The fiscal year of the Association shall be the calendar year.

2.3 Seal. The seal of the Association shall bear the name of the corporation, the word, "Florida", the words, "Corporation not-for-profit", and the year of incorporation.

3. Members.

3.1 Qualification. Qualification and membership in the Association is as provided in Article VI of the Articles, as may be supplemented by these Bylaws.

3.2 Change of Membership. Change of membership in the Association shall be established by recording in the Public Records of Flagler County, Florida, a deed or other instrument establishing record title to a Unit under the jurisdiction of the Association. The Owner designated as grantee by such instrument thus becomes a Member of the Association and the membership of the prior Owner is terminated. The new Owner shall notify the Association of such property transfer and furnish the Association a copy of the recorded deed, the new Owner's address, telefax number, e-mail address, and the Owner's local agent, if any. Any notice requirements set out in these Bylaws and in the Articles shall be deemed to be complied with if notice to an Owner is directed to the address of said Owner or local agent as then reflected in the Association's records.

3.3 Voting Rights. The voting rights of each Member of the Association and the manner of exercising such rights shall be as set forth in Article VI of the Articles, as may be supplemented by these Bylaws.

3.4 Designation of Voting Representative. If a Unit is owned by one person or entity, that Owner's rights to vote shall be established by the record title to the Unit. The vote of the owner(s) of a Unit owned by more than one natural person, as tenants in common, joint tenants, or by a partnership, limited liability company or any other association of natural persons, or by a corporation, a trust, or any other entity shall be cast or otherwise exercised, at all meetings at which Members of the Association are entitled to vote or otherwise act, by one natural person designated by the owner(s) of such Unit as the "Designated Representative" thereof. In each instance where title to a Unit is proposed to be conveyed or is otherwise to become vested in more than one natural person, or by a partnership, limited liability company or any association of natural persons, or a corporation, a trust, or any other entity, the prospective owner(s) shall, by written instrument acceptable to the Association ("Voting Certificate"), designate one natural person as the Designated Representative. The Voting Certificate shall be filed with the Secretary of the Association and the person so designated shall be and remain the Designated Representative of the Unit until such designation has been revoked by written instrument executed by the owner(s) of the Unit or by lawful conveyance of the Unit. The Designated Representative of the Unit shall be the only person entitled to cast or exercise, in person or by proxy, the vote of the owner(s) of such Unit at any meeting of Members or in connection with any action concerning which Members of the Association shall be required or allowed to vote or otherwise act.

3.5 Ownership by Husband and Wife. Notwithstanding the provisions of Section 3.4 above, whenever any Unit is owned solely by a husband and wife, they may, but shall not be required to, designate a Designated Representative. In the event a Voting Certificate designating a Designated Representative is not filed by the husband and wife, the following provisions shall govern their right to vote:

- (i) Where both husband and wife are present at a meeting, each shall be regarded as the agent and proxy for the other for purposes of casting a vote for each Unit owned solely by them. In the event they are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to exercise their vote on that subject at that meeting.
- (ii) Where only one (1) spouse is present at a meeting, the spouse present may exercise the right to vote for that Unit without establishing the concurrence of the other spouse, absent any prior written notice to the contrary to the Association by the other spouse. In the event of prior written notice to the contrary to the Association by the other spouse, the vote of said Unit shall not be considered in determining the requirement for a quorum or for any other purpose unless such prior notice to the contrary has been withdrawn by a subsequent written notice executed by both husband and wife.

- (iii) Where neither spouse is present, the person designated in a proxy signed by either spouse may exercise the right to vote for that Unit, absent any prior written notice to the contrary to the Association by the other spouse. In the event of prior written notice to the contrary to the Association or the designation of a different proxy by the other spouse, the vote of said Unit shall not be considered in determining the requirement for a quorum or for any other purpose.

3.6 Approval or Disapproval of Matters. Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the votes of such Owner if at an Association meeting, unless the joinder of all record Owners is specifically required by the Declaration, the Articles, or by these Bylaws.

3.7 Restraint Upon Assignment of Shares in Assets. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to that Owner's Unit.

4. Members' Meetings.

4.1 Annual Members' Meetings. The annual Members' meeting shall be held on the date, at the place and at the time determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and, to the extent possible, no later than twelve (12) months after the last preceding annual meeting. The purpose of the meeting shall be, except as provided herein to the contrary, to elect Directors, and to transact any other business authorized to be transacted by the members, or as otherwise stated in the notice of the meeting sent to Owners in advance thereof. Unless changed by the Board of Directors, the first annual meeting shall be held in the month of November following the year in which the Declaration is recorded in the public records.

4.2 Special Members' Meetings. Special meetings of the Members may be called by either of the following:

- (a) the Board of Directors;
- (b) the Chairman of the Board of Directors;
- (c) the President or Vice President of the Association; or
- (d) The holders of not less than ten percent (10%) of the total voting interests of the Association.

4.3 Notice of All Meetings of Members. Written notice stating the place, day and hour of the meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered to each Member entitled to vote at such meeting not less than fourteen (14) or more than sixty (60) days before the date of the meeting, by hand delivery, first-class mail, electronic communication, telefax, certified return receipt mail, a nationally recognized overnight courier delivery service, or any other method allowed by Chapters 617 and 720, *Florida Statutes*, by or under the supervision of the President or the Secretary of the Association.

4.4 Quorum; Voting. A quorum at Members' meetings shall consist of the presence, either in person or by proxy, of persons entitled to cast at least thirty percent (30%) of the total voting interests in the Association. If a quorum is present, the concurrence of at least a majority of the voting interests present, in person or by proxy, and entitled to vote on the subject matter shall constitute the act of the Members and shall be binding upon all Members for all purposes, except when the approval by a greater number of Members is required by the Declaration, any Supplemental Declaration or applicable law. When a specified item or business is required to be voted upon by a particular class of Members, the attendance, in person or by proxy, of at least thirty percent (30%) of the total voting interests of that particular class shall constitute a quorum for the transaction of such item of business by that class, and the concurrence of at least a majority of the voting interests of that class present, in person or by proxy, shall constitute the act of that class of Members and shall be binding upon all Members for all purposes, except when the approval by a greater number of such class of Members is required by the Declaration, any Supplemental Declaration or applicable law. After a quorum has been established at a Members' meeting, the subsequent withdrawal of Members so as to reduce the number of votes at the meeting below the number required for a quorum shall not affect the validity of any action taken at the meeting or any adjournment thereof.

4.5 Proxies. The Members have the right to vote in person or by proxy. To be valid, a proxy must be dated, must state the date, time and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is only effective for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires ninety (90) days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his place. If such provision is not made, substitution is not permitted.

4.6 Adjourned Meetings. Adjournment of an annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time or place pursuant to applicable law. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If, however, after the adjournment the Board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given in compliance with these Bylaws to each Member on the new record date entitled to vote at such meeting.

4.7 Order of Business. The order of business at annual Members' meetings, and as far as practical at all other Members' meetings, shall be:

- (a) Call to order.
- (b) Appointment of a chairman of the meeting (who need not be a member or director).
- (c) Calling of the roll and certifying of proxies.
- (d) Proof of notice of meeting or waiver of notice.
- (e) Reading and approval of minutes of prior meeting(s).
- (f) Reports of directors and officers.
- (g) Reports of Committees.
- (h) Election of directors at annual meetings.
- (i) Unfinished business.
- (j) New business.
- (k) Adjournment.

4.8 Participation by Owners. Subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board, Owners shall have the right to speak at the annual and special meetings of the Owners, committee meetings and Board meetings with reference to all designated agenda items. A Owner does not have the right to speak with respect to items not specifically designated on the agenda, provided, however, that the Board may permit an Owner to speak on such items in its discretion. Any Owner may tape record or videotape a meeting, subject to the following and such further reasonable restrictions as may be adopted from time to time by the Board: (a) the only audio and video equipment and devices which Owners are authorized to utilize at any such meeting is equipment which does not produce distracting sound or light emissions; (b) audio and video equipment shall be assembled and placed in position in advance of the commencement of the meeting; (c) anyone videotaping or recording a meeting shall not be permitted to move about the meeting room in order to facilitate the recording; and (d) at least 48 hours prior written notice shall be given to the Secretary of the Association by any Owner desiring to make an audio or video taping of the meeting.

4.9 Minutes of Meetings. The Association shall maintain minutes of all meetings of the membership and of the Board of Directors in written form or in another form that can be

converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each director present at a board meeting, must be recorded in the minutes. The minutes shall be available for inspection by Members or their authorized representatives at any reasonable time. The Association shall retain minutes for a period of not less than seven (7) years.

5. Board of Directors.

5.1 Number, Appointment, and Term of Office. The number, appointment and terms of Directors shall be as provided in Article VII of the Articles as may be supplemented by these Bylaws.

5.2 Election of Directors. Election of Directors shall be held at the annual members' meeting at the first annual meeting in which any Directors will be elected by a vote of the Association Members. Not less than sixty (60) days prior to a scheduled election, the Association shall mail or deliver to each Owner entitled to vote, a first notice in any manner described above in Section 4.3 of the date of election. Any Owner or other eligible person desiring to be a candidate for the Board shall give written notice in any manner described above in Section 4.3 to the Secretary of the Association not less than forty (40) days prior to the scheduled election. Together with the notice of meeting and agenda, the Association shall then mail or deliver a second notice in any manner described above in Section 4.3 of the meeting to all Owners entitled to vote therein, together with a ballot which shall list all candidates. Upon request of a candidate, the Association shall include an information sheet, no larger than 8-1/2 inches by 11 inches furnished by the candidate, which must be furnished by the candidate to the Association not less than thirty five (35) days before the election, to be included with the mailing or delivery of the ballot, with the costs of mailing and copying to be borne by the Association. The Association has no liability for the contents of the information sheets prepared by the candidates. In order to reduce costs, the Association may print or duplicate the information sheets on both sides of the paper. The election of directors shall be by written ballot or voting machine or by any other electronic means adopted by the Board (including, but not limited to, e-mail). Elections shall be decided by a plurality of the votes cast.

5.3 Removal. Except for Declarant-appointed directors who may only be removed by Declarant, any director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of the death, resignation or removal of a director, his successor shall be selected by the remaining directors and shall serve for the un-expired term of his predecessor; provided, however, that Declarant shall select successors to Declarant-appointed directors.

5.4 Directors Fees. Directors shall serve without compensation or fees; provided, however, nothing herein shall be deemed to prevent reimbursement of out-of-pocket expenses approved by the Board and incurred on behalf of the Association.

6. Meetings of Directors.

6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly without notice at such place and hour as may be fixed from time to time by resolution of the Board. If the day for such regular meeting is a legal holiday, then the meetings shall be held at the same time on the next day that is not a legal holiday. Notice of such regular meeting is hereby dispensed with. Regular meetings of the Board of Directors shall be open to the Members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege.

6.2 Special Meetings. Special meetings of the Directors may be called by the Chairman of the Board, by the President or Vice President of the Association, or by any two (2) directors. Not less than two (2) days notice of the special meeting shall be given to each director, which notice shall state the time, place and purpose of the meeting. Except in the case of any emergency, notice of such meetings shall be posted conspicuously on the Properties forty-eight (48) hours in advance of the special meeting for the attention of Members. All special meetings of the Board of Directors shall be open to the Members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege.

6.3 Action Taken Without Notice. The transaction of any business at any meeting of the Board of Directors, however, called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and, if either before or after the meeting, each of the directors not present signs a written waiver of notice, or a consent to the holdings of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the Associations' records and made a part of the minutes of the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

6.4 Defects in Notice, etc. Waived by Attendance. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened. Directors may participate in a meeting of such Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence in persons at a meeting.

6.5 Quorum. A quorum at directors' meetings shall consist of a majority of all votes of the entire Board of Directors. The acts approved by a majority of those votes represented at a meeting at which a quorum is present shall constitute the act of the Board of Directors, except

where approval by a greater number of directors is required by the Declaration, a Supplemental Declaration, the Articles, or these Bylaws.

6.6 Adjourned Meetings. A majority of the directors present, whether or not a quorum exists, may adjourn any meeting of the Board of Directors to another time and place. Notice of any such adjourned meeting shall be given to the directors who were not present at the time of the adjournment and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors.

6.7 Action by Directors Without a Meeting. Any action required to be taken at a meeting of the directors or a committee thereof, may be taken without a meeting if a consent in writing setting forth the action so to be taken signed by all of the directors or all the members of the committee, as the case may be, is filed in the minutes of the proceedings of the Board or of the committee. Such consent shall have the same effect as a unanimous vote.

6.8 Presiding Officer. The presiding officer of directors' meetings shall be the President. In the absence of the President, the Vice President shall preside, and in the absence of both, the directors present shall designate one of their number to preside.

6.9 Powers and Duties of Board of Directors. All of the powers and duties of the Association existing under Chapter 617, *Florida Statutes*, the Declaration, a Supplemental Declaration, the Articles, and these Bylaws, shall be exercised by the Board of Directors, subject only to approval by Members when such is specifically required.

## 7. Officers.

7.1 Officers and Election. The executive officers of the Association shall be a President, who shall be selected from the Board of Directors, a Vice President, who also shall be selected from the Board of Directors, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by vote of the directors at any meeting. Any person may hold two or more offices except that the President shall not also be the Secretary. The Board of Directors shall from time to time elect such other officers and designate their powers and duties as the Board shall find necessary or convenient to manage properly the affairs of the Association.

7.2 President. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of an association, including but not limited to the power to appoint committees from among the Members from time to time as he may in his discretion determine appropriate to assist in the conduct of the affairs of the Association. He shall serve as chairman of all Board and Members' meetings.



7.3 Vice President. The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

7.4 Secretary. The Secretary shall keep the minutes of all proceedings of the directors and the Members. He shall attend to the giving and serving of all notices to the Members and directors and other notices required by law. He shall keep the records of the Association, except those of the Treasurer and shall perform all other duties incidental to the office of the Secretary of an association and as may be required by the directors or the President. The duties of the Secretary may be fulfilled by a manager employed by the Association.

7.5 Treasurer. The Treasurer shall have custody of all property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the books of the Association in accordance with good accounting practices and provide for collection of assessments; and he shall perform all other duties incident to the office of Treasurer. The duties of the Treasurer may be fulfilled by a manager employed by the Association.

7.6 Compensation. The compensation, if any, of the officers shall be fixed by the Board of Directors.

8. Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, any Supplemental Declaration, the Articles and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

9. Fiscal Management. The provisions for fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions.

9.1 Accounts. The receipts and expenditures of the Association shall be credited and charged to accounts under the following classifications and any other classifications as shall be appropriate, when authorized and approved by the Board of Directors. The receipts shall be entered by their amounts and by accounts and receipt classifications. Expenses shall be entered by their amounts and by accounts and expense classifications.

(a) Current Expense. The current expense account shall include all receipts and expenditures to be made within the year for which the expenses are budgeted and may include a reasonable allowance for contingencies and working funds. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expense for the succeeding year or to fund reserves. This may include but not limited to:

- expense;
- (1) Professional, administration and management fees and
  - (2) Taxes on Common Property or Village Common Property;
  - (3) Expense for utility services and maintenance expense relating to the Areas of Common Responsibility, Common Property and Village Common Property;
  - (4) Insurance costs;
  - (5) Administrative and salary expenses;
  - (6) Operating capital; and
  - (7) Other expenses.

(b) Reserve for Deferred Maintenance. If required by the Board of Directors, there shall be established a reserve account for deferred maintenance which shall include funds for major maintenance items which are the obligation of the Association and which occur less frequently than annually.

(c) Reserve for Replacement. If required by the Board of Directors, there shall be established a reserve account for replacement which shall include funds for repairs or replacements which the Association is obligated to make resulting from damage, depreciation or obsolescence.

9.2 Budget. The Board of Directors shall adopt an operating and capital budget for the Properties as provided in the Declaration in advance for each calendar year which shall include the estimated funds required to defray the current expenses and shall provide funds for the foregoing reserves. The operating budget shall provide separate expense and reserve figures for (1) Village Common Properties, if any, so as to permit appropriate allocation of assessments therefore among all benefitted Units, and (2) the Common Properties and the Areas of Common Responsibility so as to permit appropriate allocation of assessments therefore among all Units.

9.3 Depository. The depository of the Association will be such bank or banks in Flagler County, Florida as shall be designated from time to time by the Board. The withdrawal of money from such account(s) shall be only by checks signed by such persons as authorized by the Board; provided, however, that the provisions of a management agreement between the Association and a manager relative to the subject matter of this section shall supersede the provisions hereof.

10. Parliamentary Rules. Roberts' Rules-Of Order (latest edition) shall govern the conduct of Association meetings, when not in conflict with these Bylaws.

11. Amendment. Amendments to these Bylaws shall be proposed and adopted in the following manner:

11.1 Method of Adoption. These Bylaws may be amended or repealed and new Bylaws adopted by Declarant so long as Declarant has the authority to appoint all of the Directors and thereafter by a majority vote of the Board or Directors present, in person or by proxy, and entitled to vote at a regular or special meeting of the Board; provided that any matter which is in fact governed by the Declaration may not be amended except as provided in the Declaration.

11.2 Declarant Approval. So long as Declarant shall own any lands within the Properties, the Additional Properties, or within the Development Plan, no Declarant related amendment shall be made to these Bylaws unless such amendment is first approved in writing by Declarant. Any amendment shall be deemed to be Declarant related if it does any of the following:

(a) directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other owners.

(b) Modifies the definitions provided for by Article I of the Declaration in a manner which alters Declarant's rights or status.

(c) modifies or repeals any provision of Article II of the Declaration.

(d) alters the character and rights of membership as provided for by Article III of the Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association.

(e) alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivision, public authorities or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements or facilities.

(f) denies the right of Declarant to convey to the Association Common Property or Village Common Property.

(g) modifies the basis or manner of assessment as applicable to Declarant or any lands owned by Declarant.

(h) alters or repeals any of Declarant's rights, reserved easements, right to grant easements, or any provision applicable to Declarant's rights as provided for by any provision of the Declaration or any Supplemental Declaration.

11.3 Proviso. No amendment shall make any changes in the qualifications for membership nor the voting rights of Members without approval in writing by all Members. No amendment shall be made that is in conflict with Chapters 617 or 720, *Florida Statutes*, unless such

inconsistencies are permitted by the provisions of Chapters 617 or 720, *Florida Statutes*, or with the Declaration or Articles of Incorporation.

12. Pronouns. Whenever the context permits, the singular shall include the plural and one gender shall include all.

13. Committees.

13.1 The standing committees of the Association shall be the Nominating Committee and the Covenants Committee. The Nominating Committee shall have the duties, authority and functions as described in these Bylaws. The Covenants Committee shall have the duties, authority, and functions as described in the Declaration.

13.2 The Board shall have the power and authority to appoint such other committees as it deems advisable. Any such other committee appointed by the Board shall consist of two (2) or more members of the Board. Committee members shall serve at the pleasure of the Board, and shall perform such duties and functions as the Board may direct.

14. Inconsistencies. In the event of any inconsistency between the provisions of these Bylaws and the Declaration or Articles of Incorporation, the provisions of the Declaration and Articles of Incorporation shall control.

Adopted by the Board of Directors of Harbor Village Marina Property Owner's Association, Inc., a Florida corporation not-for-profit, effective this 26 day of Feb, 2002.

By: [Signature]  
Print Name: Robert F. Masten  
Its: Pres

**EXHIBIT "C"**  
**(THE "PROPERTIES")**

Lots 1 - 184 per the Plat of Harbor Village Marina as recorded in Map Book 33, page 39-44, of the public records of Flagler County, Florida.