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- 1.2 "**Appurtenance**" means anything attached to a property, literally or abstractly, and is passed on to a new Owner.
- 1.3 "**Architectural Planning Criteria**" means written rules to preserve the beauty, quality, and value of the community.
- 1.4 "**Architectural Review Committee (ARC)**" means a committee consisting of at least three (3) persons who administer and perform the architectural review and control functions of the Association.
- 1.5 "**Articles**" means the Articles of Incorporation of Mariner's Cove Homeowners Association of Lee County, Inc., as amended from time to time.
- 1.6 "**Assessments**" means a sum or sums of money payable to the Association, including a share of the funds required for the payment of common expenses assessed by the Association against an Owner as Regular, and Special assessments, and Service, Resale Capital Contribution Fee and Individual Assessments, as defined herein.
- 1.7 "**Association**" means Mariner's Cove Homeowners Association of Lee County, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Common Areas and the other rights and obligations referenced herein.
- 1.8 "**Association Documents**" means Governing Documents, ARC Rules, Boat Dock Rules or any other document governing, binding on, or administered by the Association, as amended from time to time.
- 1.9 "**Board**" means the Board of Directors responsible for the administration of the Association.
- 1.10 "**Boat Dock Rules and Regulations**" means the administrative regulations governing use of the Boat Docks and procedures for administering the Boat Docks, as adopted, and amended from time to time by recommendations by the Boat Dock Committee and approved by the Board of Directors.
- 1.11 "**Bylaws**" means the Second Amended and Restated Bylaws of Mariner's Cove Homeowners Association of Lee County, Inc., as amended from time to time.
- 1.12 "**Common Areas**" means those areas of land which are dedicated to or owned or leased by the Association, or any other property which is dedicated, conveyed, leased, or licensed to the Association, and which are intended to be devoted to the common use and enjoyment of the Members of Mariner's Cove Homeowners Association of Lee County.
- 1.13 "**Common Expenses**" means the expenses incurred by the Association in the course of performing its duties under the Association Documents and the law, including the costs of operating the Association, the costs of administration, maintenance, operation, repair,

and replacement of the Common Areas and the Water Management System, and other expenses declared by the Association Documents to be common expenses, and any other valid expenses or debts of the common property as a whole of the Association which are assessed against the Owners.

- 1.14 **"Common Surplus"** means the excess of all receipts of the Association, including but not limited to assessments, profits, and revenues over the common expenses.
- 1.15 **"Covenant"** means a formal and serious agreement or promise.
- 1.16 **"Declaration"** (formerly known as "Deed Restrictions" or "Deed of Restrictions") means this Second Amended and Restated Declaration, as amended from time to time.
- 1.17 **"Disclosure Summary"** means a formal document presented to a buyer and validated by the buyer his/her understanding of the expectation of being a Member of Mariner's Cove HOA and the existence of the Association Documents.
- 1.18 **"Domestic Partners"** means two adults who have chosen to share their lives in a committed relationship that includes a mutual and exclusive commitment to each other's well-being, wherein each partner shares the same permanent address, have no blood relationship that would preclude a marriage in the State of Florida, are of the age of legal majority, are jointly responsible for each other's common welfare, share financial interdependence and mutual obligation akin to those of marriage. In Mariner's Cove Domestic Partners shall be considered as married individuals for the purpose of the Association Documents and one person's age must be 55 or over.
- 1.19 **"Easement"** means the right a landowner has been granted over the land of another, as the right of access to water, right of way, etc., at no charge.
- 1.20 **"Family Member"** means a person who resides in a Unit as part of the Owner's Family, but is not a titleholder. This person must be 18 years or older.
- 1.21 **"Fiduciary"** means an individual in whom others have placed the utmost trust and confidence to manage and protect property or money, and has an obligation to abide by the Association Documents and to act for others' benefit for the good of the community.
- 1.22 **"Governing Documents"** means this Declaration, the Articles, the Bylaws, and the Rules and Regulations of the Association and all recorded exhibits thereto, as amended from time to time. In the event of a conflict in the interpretation of the Governing Documents, the order of priority from highest to lowest will be: this Declaration, the Articles, the Bylaws, the Rules and Regulations.
- 1.23 **"Guest"** means any person (including relative) who is physically present in, or occupies a Dwelling Unit on a temporary basis at the invitation of the Owner or other legally permitted Occupant, without the payment of consideration. Service providers for

special needs of Owners/Occupants will not be considered Guests.

1.24 **"Home", "Dwelling" or "Dwelling Unit"** means a single story residential structure intended for a single-family residential use which is constructed, installed, situated, or located on a Lot on the properties.

1.25 **"Institutional Mortgagee"** means:

A. A lending institution having a first mortgage lien upon a Lot, Parcel or Tract, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, a life insurance company; or

B. A governmental, quasi-governmental or private agency that is engaged in the business of holding, guaranteeing or insuring residential mortgage loan including without limitation the Federal National Mortgage Association, Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and which holds, guarantees, or insures a first mortgage upon a Lot.

1.26 **"Lessee" or "Tenant" or "Renter"** means any person who resides in a home for valuable consideration.

1.27 **"Lot" or "Residential Lot"** means one of the platted portions of land into which the Community has been subdivided, upon each of which a single Dwelling Unit has been or is intended to be constructed. Unless the context clearly requires a different interpretation, the term "Lot" shall be interpreted as if the words "and the Dwelling Unit constructed thereon" followed it.

1.28 **"Mariners Cove"** is the name of the community.

1.29 **"Member"** means a person named on deed of property as Owner within Mariners Cove, age 55 or over, and who is obligated by the Association Documents to pay assessments and fees.

1.30 **"Occupant"** is a person who resides in a home.

1.31 **"Owner" or "Lot Owner"** means the record Owner of legal title to a Lot.

1.32 **"Primary Occupant"** means the natural person, age 55 or over, approved for occupancy of a home such as but not limited to the following: Owner, person designated by the Owner, person designated by a trustee or a corporation or other entity.

1.33 **"Primary Owner"** means the natural person, age 55 or over, whose name appears on a deed or other instrument evidencing his/her ownership interest and has been designated

by any other Owners as the person so referenced.

- 1.34 **"Property" or "Community"** means all the real property that is subject to the Association Documents.
- 1.35 **"Proxy"** means a person who has been granted the authority to vote for someone else or the document which grants that permission.
- 1.36 **"Rules and Regulations"** means the regulations governing use of the Common Areas and procedures for administering the Association, as adopted, and amended from time to time by resolution of the Board of Directors.
- 1.37 **"SFWMD"** means South Florida Water Management District.
- 1.38 **"Service Assessment"** means a charge against one or more Lots for any service, material, or combination thereof which may be provided by the Association for the use and benefit of the Owner(s) on a voluntary basis, such as contracting in bulk for repairs, services, materials, or maintenance. The amount paid or incurred by the Association on behalf of the Owners accepting or receiving such material or service shall be a service assessment against the Lots so benefited. An Owner is deemed to have agreed to such assessment by the act of subscribing to, requesting, or accepting the material or service.
- 1.39 **"Single-Family"** shall refer to any one of the following:
 - A. One adult natural person, that person's spouse, or significant other, or Domestic Partner, if any, and the preceding mentioned person's parents, or a person with a certified disability who regularly resides with them, if any, making a maximum of four Occupants in which one (1) of two (2), or two (2) of three (3), or three (3) of four (4) of the Occupants are 55 or over. No persons shall be under the age of 18 years old.
 - B. Two natural persons, but not more than two natural persons who customarily and continuously reside together as a single housekeeping Unit in which at least one is 55 or over and none is under the age of 18 years old.
- 1.40 **"Structure"** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof".
- 1.41 **"Total Voting Interests"** means the total number of possible votes of the Mariner's Cove Homeowners Association of Lee County.
- 1.42 **"Water Management System"** means the controlling surface water drainage by ditches, tiling, and other applicable means as described in the SFWMD Surface Water Management Permit.



2. LAND USE AND PLAN FOR DEVELOPMENT.

2.1 Land Use.

A. Zoning. All Homes must comply with the MH-2 and AG-2 zoning designations regulating the community. Block “F” is zoned AG-2 and park models are not permitted in any portion of the subdivision which is zoned AG-2. All other remaining portions of the subdivision, other than Block “F” are zoned MH-2 and park models are permitted in any portion of the subdivision which is zoned MH-2.

B. Subdivisions. No Lot may be divided or subdivided without the express written consent of the Association.

C. Regulation of Land. No Owner shall initiate, undertake or attempt to inaugurate or implement any variation from, modification to, or change to any subdivision plats, governmental plans, land development regulation, development orders or development permits applicable to the Community, or to any Lot, Tract or Parcel including but not limited to placing one home on two Lots or across adjacent property lines. Each lot shall be a separate entity and development must only occur within the property lines.

2.2 Plan For Development.

A. Single-Family, Age and Pet Restrictions. The Community is a single-family residential community with restrictions, including: age 55 or over restrictions with no persons under 18 years of age allowed, and Mariner’s Cove is a “No Pets” Community.

B. Ownership Acknowledges Association. By acceptance of a deed or other instrument evidencing his/her Ownership interest, each Owner, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of all Association Documents as amended from time to time.

1. Voting Rights. Record legal titleholders to a Lot who are Members in good standing shall have one (1) vote per residential Lot owned pursuant to the Association Documents. No amendment to any of the Association Documents shall be effective to change any Member's voting rights, unless all Members affected first consent in writing to said amendment.

C. Quality Material-Workmanship. All Homes and structural additions shall be of durable good quality material and quality workmanship presenting a first-class residential community of single-family homes with residents having a high regard for the appearance of the properties.



3. ASSOCIATION.

3.1 **The Association's Purposes And Duties.** The purposes and duties of the Association include those set forth in the Florida Statutes Chapters 617 and 720 and in the Association Documents. The primary purposes of the Association:

A. **Association Documents.** To take action as the Association is authorized or required to take with regard to the Community pursuant to the Association Documents;

B. **Enforce Covenants.** To enforce restrictive covenants of the Association Documents applicable to the Community;

C. **Official Records.** To maintain the official records of Mariner's Cove listed in the Bylaws.

1. **Maintain Records.** To maintain official records for at least seven (7) years as required by Florida Statutes, as amended from time to time.

2. **Records inspection/photocopying.** To make available the official records for inspection and photocopying by Members or their authorized agents within 45 miles of the community or within the county in which the Association is located. The records shall be open to inspection by Members or their authorized representatives at all reasonable times within ten (10) business days after receipt by the Association of a written request for access and in accord with the requirements of Florida law, as it may be amended from time to time.

D. **Common Areas and Recreational Facilities.** The Association is responsible for the Common Areas and recreational facilities and:

1. **Title, Operate, Maintain.** To hold title to, operate and maintain the Common Areas of Mariner's Cove, including without limitation, recreational facilities, private roadways, the Stormwater Management System and retention areas, and entranceways within the Community.

2. **Additions, Modifications.** To make additions or modifications to the Common Areas as may be made if not inconsistent with the Association Documents and any amendments thereto. The Common Areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, mortgaged, or otherwise encumbered, without first obtaining the approval of not less than a majority of the voting interests. The foregoing shall not be construed to limit the authority of the Association or the Association through its Board of Directors to grant such easements over, across and through the Common Areas, as may be necessary for the effective and efficient operation of the facilities or for the general benefit of the Members.

3. **Utilities.** To insure no lines or wires for communication or transmission of current shall be constructed, or placed within the Common Areas unless the same shall be contained in protected cables.

4. Rules for Using Common Areas. To adopt reasonable Rules and Regulations pertaining to the use of such Common Areas and recreational facilities by any Member and his/her family or his/her Guests, employees, agents, or Lessees. To insure all Common Areas and recreational facilities serving the Association shall be available to Members in the Association served thereby and their invited Guests for the use intended for such Common Areas and recreational facilities.

5. Negligent Damage. Each Member shall be liable for the expenses of any maintenance, repair or replacement of Common Areas, made necessary by his/her act or negligence or by that of any Member of his/her family or his/her Guests, employees, agents, or Lessees.

E. Aesthetic Control. To control the architectural and aesthetic appearance of Mariner's Cove by established criteria and procedures for the use and construction by the Members on Lots within the Community.

F. Roster. The Association is to maintain a current Owners' roster, as stated in the Bylaws, and Owners are responsible for notifying, in writing, the Association of any change in their information. A copy of the roster shall be made available to any Member upon request, excluding any confidential personal information and information an Owner wants to keep private, shall not be made available.

G. Directory. The Association may print and distribute a directory containing the name, unit number, address, phone number and/or email address of each Owner. An Owner may exclude the telephone number and/or email address from the directory by a written request to the Association. The Association intends to notify all Owners of its intention so Owners who do not wish to have their phone numbers and/or email addresses published known, they need to act in advance of the publication date

3.2 Association's Rights. The right of the Association, by and through its Board of Directors:

A. Budget. To adopt the annual budget and to determine the annual (regular) assessments to be paid by Owners;

B. Transfer of Common Areas. To dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility;

C. Grant Easements. To grant easements over, across or through the Common Areas;

D. Borrow Money. With prior assent of a majority of the voting interests, to borrow money for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas;

E. Protect Common Areas. To take such steps as are reasonably necessary to protect the Common Areas;

F. Regulate Traffic. To regulate parking and traffic on the private roads within the Community, including without limitation the use of access gates, speed limits or speed bumps;

G. Access Rights. To exercise its right of access to all Lots at all times reasonably necessary and appropriate to enable the Association to inspect and maintain service facilities and to insure compliance with the Association Documents;

H. Erect Signs. To erect signs, as the Board, in its discretion, deems appropriate such as but not limited to entry, speed limit, stop, parking, and directional signs, banners, flags, billboards or advertisements used or erected by the Association, and signs required by Law.

3.3 Association's Powers

A. Enforcement. Enforcement of the Association Documents shall be by remedies such as but not limited to notifications, warnings, fining, suspension of use rights, a proceeding at law or in equity and as stated in any Association Documents. These remedies may be instituted by the Association, its successors or assigns, against any person or persons violating or attempting to violate or circumvent any covenant, condition, or restriction, either to restrain violation or to recover damages, and against any Lot to enforce any lien created by these covenants. Failure of the Association to enforce any covenants, condition, or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

1. **Fines and Suspension of Use Rights.** The Board of Directors may levy fines and/or suspensions of use rights against Owners/Members, or Owners/Members' Tenants or Guests, or both, who commit violations of Florida Statutes Chapter 617 or 720 or the provisions of the Association Documents, or who permit such violations by their family members, Guests, or Lessees. Owners are responsible for all payments owed to the Association and for the actions and omissions of their family, Guests and Tenants, including, but not limited to their following the rules of the Association. Procedures for fining and suspension of use rights are stated in the Bylaws.

B. Correction of Health and Safety Hazards. The Association may correct any conditions of the physical property including Common Areas and Owners/Members' Lots, which are reasonably deemed by the Board of Directors to be an immediate hazard to the public health or safety, as an emergency matter, and in the circumstances of an Owner/Member's Lot which continues to be in noncompliance with the Association Documents, and the cost thereof shall be charged to the responsible Owner/Member and collected as an Individual Assessment in the manner of other assessments.

C. Purchase of Lots. The Association has the power to purchase Lots in the community in connection with the foreclosure of an Association lien for assessments, charges or fines or any other foreclosure of an interest that affects the Association's lien

and to hold, lease, mortgage, encumber, or convey them with such power to be exercised by the Board of Directors without prior approval of the Members.

D. Interests in Real and Personal Property. The Association has the power to acquire property, both real and personal, through the Board of Directors, only after approval by at least a majority of the voting interests of the Association, except as stated in 3.3 C.

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

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

G. Acts of the Association. Unless the approval or affirmative vote of the Members is specifically made necessary by some provision of the law or the Association Documents, all approvals or actions permitted to be taken by the Association may be given or taken by its Board of Directors, without a vote of the Members. The Officers and Directors of the Association have a fiduciary relationship to the Members. An Owner/Member does not have the authority to act for or bind the Association by reason of being an Owner/Member.

H. Processing Fees. The Association may charge a processing fee not to exceed the maximum permitted by law per transaction for, but not limited to, the following:

1. **Title.** Approval of transfers of title
2. **Background Check.** Buyers, Renters
3. **Estoppel Letter.** Preparation of a “Lien Free” document
4. **Late Payments.** Late payments of assessments or other fees
5. **ARC Forms.** Processing requests for ARC reviews

I. Create Forms and Procedures. The Association shall be empowered to create/adopt forms and procedures, as needed, for completing the business of the Association as stated in the Association Documents.

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4. ASSESSMENTS. The provisions of this section shall govern all assessments by the Association payable by Owners/Members. Assessments and charges shall be established and collected as provided herein and in the Bylaws. On the first day of each fiscal year,

an annual assessment shall be assessed against each Lot. No Common Ground shall be subject to assessment by the Association. All Assessment are due and payable as determined by the Board from time to time.

A. Owner's Liability. The Owner of each Lot, regardless of how title was acquired, is liable for all assessments or installments thereon-coming due while he/she is the Owner. Multiple Owners are jointly and severally liable. No Owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the Association Documents as to Institutional Mortgagees, no Owner may be excused from the payment of assessments unless all Owners are similarly excused.

B. Transfer Of Ownership. Whenever title to a Lot is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. A request for an Estoppel Letter from the Association is recommended before transfer of ownership to protect the new Owner.

C. Assessments Property Of Association. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his/her Lot. No Owner can withdraw or receive distribution of his/her prior payments to the common surplus or Association reserves, except as otherwise provided by law.

D. Association Ownership Liability. Notwithstanding the foregoing, in the event the Association acquires title to a unit, the Association will not be considered an Owner for the purposes of joint and several liability.

4.1 Owner Covenants to Pay Assessments. Each Owner of a Lot covenants and agrees to pay the Association:

A. Regular Assessment. Regular Assessments based on the annual budget adopted by the Board;

B. Special Assessment. Special Assessments for capital improvements or other Association expenditures not provided for by Regular Assessments;

C. Service Assessment. Voluntary assessments as described below.

D. Individual Assessment. Any charges properly levied against individual Owner(s) ("Individual Assessments") including but not limited to fines, late fees, and Service Assessments.

E. Resale Capital Contribution Fee. Upon each transfer of record fee title to a Lot, a contribution shall be made by the purchaser of such Lot to the working capital of the

Association in the amount of \$2,500.00.

A “Capital Contribution” is a one-time charge normally associated with a transfer of title on a property that is part of a condo or **homeowners** association. It is normally paid at settlement to the **Association** and is usually deposited into the **capital** reserves to fund future maintenance items.

This assessment shall be paid to the Association for use as reserves and/or capital improvements as determined by the Board from time to time. The charge required by this Section 4.1 shall constitute as assessment against the Lot, and shall be subject to exemptions for inheritance, inter-family, estate planning and owner inter-community transfers. This assessment shall be afforded the same lien, lien priority, and rights of collection as are applicable to all other Association assessments, including the right to charge and collect interest, late fees, and the costs of collection and attorney fees.

4.2 Purposes of Assessments. The assessments levied by the Association shall be used for the expenses incurred by the Association while doing Mariner’s Cove business as per the Association Documents:

A. Regular Assessment. To operate, maintain, repair, improve, construct, and preserve not-for-profit basis the Common Areas owned by the Association for the benefit of its Members, Guests, and Tenants, and to perform all other duties and responsibilities of the Association as provided in the Association Documents. Additional expenses for bulk contract with third parties, if permitted by law and approved by the Members, will become a common expense. Common expenses also include the funds necessary to provide reserve accounts for renovation or major repairs to the Common Areas.

B. Special Assessment. The Owners of each Lot shall be liable for Special Assessments levied by the Association for expenses not provided by the Regular Assessment, such as but not limited to, capital improvements, major repairs, and emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss.

C. Service Assessment. Charges for any service, material or combination thereof which may be provided by the Association for the use and benefit of the Owner(s) on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance shall be charged against the Lots so benefited. The amount paid or charge incurred by the Association on behalf of the Owners accepting or receiving such material or service shall be a Service Assessment against the Lots so benefited. An Owner is deemed to have agreed to such assessment by the act of subscribing to, requesting, or accepting the material or service.

D. Individual Assessment. The Owners of each Lot shall be liable for any expense or charge of the Association attributable to or on behalf of an individual Owner pursuant to the Association Documents and all monetary fines, late fees, interest, and attorney fees assessed against an Owner pursuant to the Association Documents shall be an Individual Assessment and shall become a lien against such Owner’s Lot which may be foreclosed

or otherwise collected as provided herein.

4.3 **Late Payments.**

A. Interest. Assessments, charges, and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid.

B. Late Payment Fee. In addition to interest the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law.

C. Past Due Assessment Priority. Assessments, charges, and installments thereon shall become due, and the Owner shall become liable for said assessments or installments on the date established in the Bylaws or as otherwise set by the Board of Directors for payment. No payment by check is deemed received until the check has cleared. Any restrictive endorsement on or accompanying a payment, notwithstanding, all payments made to the Association by or on behalf of an Owner shall be applied in the order required by Florida law.

D. Action at Law. All unpaid assessments and charges also constitute a personal obligation of the Owners and the Association may, in addition to any other remedy herein provided, bring an action at law against any Owner liable for unpaid charges or assessments. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney fees in connection with any appeal of such action.

E. Owners That Lease. The Association shall also have the right to require any Tenant occupying the Lot during any period in which assessments for the Lot are due but have not been paid to the Association, to pay the rent to the Association as provided in the Association Documents.

4.4 **Estoppel Letter, Mortgagee Questionnaires.**

A. Estoppel Letter. Within ten (10) business days after request by an Owner or mortgagee, the Association shall provide an Estoppel Letter stating whether all assessments and other monies owed to the Association by the Owner with respect to the Lot have been paid. Any person other than the Owner who relies upon an Estoppel Letter provided to them by the Association shall be protected thereby. The Association may charge up to the maximum amounts permitted by Florida law to issue an Estoppel Letter.

B. Mortgagee Questionnaires. The Association may but is not obligated to respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire the Association may charge a fee as determined by the Board from time to

time (in addition to any charge for an Estoppel Letter) plus attorney's fees for doing so.

5. **LIEN.** The lien shall relate back to the date of recording of the original Declaration (Known as Deed of Restrictions 1997), which was recorded January 31, 1997, at OR Book 2787, Page 2797 et seq, in the Public Records of Lee County, Florida. The Association has a lien on each Lot that was created when the Owner accepted the deed to the Lot and agreed to pay assessments, other fees or charges.

A. **Claim of Lien.** Recording a Claim of Lien in the Public Records of Lee County perfects the lien. The Claim of Lien shall state the description of the property encumbered thereby, the name of the record Owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Association.

B. **Securing Assessments.** The Claim of Lien shall secure all unpaid assessments, fines and charges, interests, late fees, costs, and attorney fees which are due, and which may accrue or come due after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

5.1 **Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges. The procedure for the foreclosure of a lien upon a Lot for unpaid assessments or charges is as provided by the Florida Statutes, as amended from time to time and the Association Documents.

5.2 **Mortgage Foreclosure.**

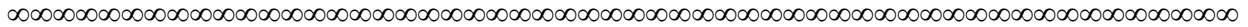
A. **Foreclosure Acquirer Liable.** Unless otherwise provided by law, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a Lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall be jointly and severally liable for all past due monetary obligations attributable to the Lot, or to the former Owner of the Lot, including but not limited to, any assessments, interest, late fees, administrative costs, attorneys' fees and any other monetary obligation which came due prior to the mortgagee's acquisition of title.

B. **Other Acquirers.** All other persons or entities acquiring title to a Lot as the result of a foreclosure or other Court ordered sale shall be obligated to pay all past due assessments and monetary obligations due and owing at the time of sale regardless of whether or not the Association has filed a lien. No Owner or acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of his or her ownership.

5.3 **Personal Property.** After the Association successfully acquires title to the property by

the foreclosure process, if the Owner does not remove personal property from the foreclosed premises, such property will be deemed forfeited to the Association and the Association may authorize removal and may sell or donate such forfeited property, if after ten (10) days written notice by certified mail addressed to the homeowner at the last known address or at such address on record as provided to the Association by the Owner, the property has not been removed. Such remedy shall be in addition to all other remedies available to the Association under applicable laws, and the Association Documents, including the right to compel removal of the property and right to impose any and all fines.

5.4 Acceleration of Payments. If any assessments, fines, or other monies owed by an Owner to the Association becomes more than thirty (30) days past due, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's monies owed to the Association for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the Public Records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees, and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.



6. EASEMENTS.

6.1 Utility Easements.

A. Blanket Easements. There is hereby reserved unto the Association and the designees (which may include, without limitation, Lee County, Florida, and any utility company), blanket easements upon, over, across, and under all of Mariner's Cove Homeowners Association of Lee County for ingress and egress; dispensing pesticides/herbicides; installation, replacing, repairing, relocating and maintaining roads, walkways, drainage systems, street lights, signage, and all utilities, including but not limited to water, sewer, meter boxes, telephone, gas, electricity, and irrigation; provided, the exercise of this easement shall not unreasonably interfere with the use of any Lot.

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

6.2 Easement to Association. The Association has the power, without the joinder of any Owner, to grant, modify or relocate easements in any portion of the Association property, as the Board shall deem necessary or desirable for the Association. Such easements, or

the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The rights and easements of the Association to a non-exclusive easement over, across, and through each Lot to meet the Association's maintenance responsibilities as well as the Water Management System shall be recognized by Owners.

6.3 Owners' Easement for Encroachment. There shall be a reciprocal appurtenant easement for encroachment and overhang between adjacent Lots. Such easement shall be for roof overhangs, air conditioners, awnings, landscaping, and other improvements that shall not extend past the Lot line, as measured from any point on the common boundary between the adjacent Lots, along a line perpendicular to such boundary at such point. ARC forms need to be completed and approved before beginning project.

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7. MAINTENANCE.

7.1 Association Maintenance.

A. Common Areas. The Association is responsible for the maintenance, repair, replacement, insurance, protection, and control of all Common Areas in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive, sanitary condition, and in good working order at all times. Designated buffer zones, open space, or other similar areas as determined by the Association shall remain in a natural or unimproved state.

B. Surface Water Management. The Association shall be responsible for maintenance of all surface water management systems such as but not limited to ditches, canals, and water retention ponds in the community.

C. Expense Limit. There shall be no material alterations of, or substantial additions to, the Community Common Areas costing more than \$10,000, in the aggregate during any fiscal year unless first approved by a majority of the voting interests of the Members of the Association. However, if the alteration or addition is reasonably necessary to meet the Association's obligations under the first sentence of paragraph A of this Section, no prior membership approval is required.

D. Lot Maintenance by Association. At its own discretion, the Association shall be responsible for mowing/trimming of Common Areas and Owners' Lots within Mariner's Cove, and maintaining the palm trees lying along the streets on an Owner's Lot in addition to palm trees on Common Areas.

7.2 Lot Maintenance by Owner. In addition to other obligations contained elsewhere herein, the individual Owners shall be responsible for the home and Lot appearance.

A. Exterior Features. The exterior features of the home, structures, outbuildings, and driveways shall be regularly cleaned, painted as needed, and properly repaired or replaced with quality materials and quality workmanship.

B. Landscaping. Owners shall be responsible for Lot maintenance of all areas not covered by structures, walkways, or paved driveways to the pavement edge of any abutting streets and to the property sides and rear Lot line including landscaped areas within the property lines. No high weeds, underbrush, high grass, or other unsightly vegetation shall be permitted to grow or remain upon any Lot, and no refuse or waste shall be allowed to be placed or allowed to remain upon any Lot. The Association contracts for mowing and trimming of Lots and Common Areas. Owner shall provide protection for skirting and landscaping to aid in mowing/trimming the Lot.

C. Owner Fails to Comply.

After ten (10) days notice by the Association of a maintenance issue and the Owner fails to correct it or contact the Association in reference to correcting it, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot and remedying the violation, with or without consent of the Owner. The Association shall charge the Owner for the cost of the corrections and said charge, until paid, shall be a lien against the offending Lot.

1. No Hearing. No hearing shall be required prior to the Association's enforcement under this Section. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Properties. Any expenses so incurred by the Association shall be billed directly to the Owner of the Lot to which such services are provided, and shall be an individual assessment charged against the Lot, secured by a lien against the Lot as provided in the Association Documents.

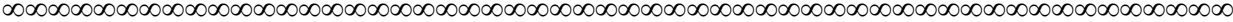
D. Utilities. Owners shall be responsible for exterior electrical lines, power disconnect box and hookups, all air conditioning components, TV cables and connections, telephone and other similar lines and connections, sanitary sewer pipes and connections, and the water main shut-off valve plus all water lines and connections that service the Owner's individual Lot.

E. Owner's Duty in the Event of Property Damage.

1. Owner's Responsibility. If any home or other improvements located on any residential Lot is destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane, or other casualty, the Owner shall cause all debris, and other unsightly materials to be removed from the site within ninety (90) days. The Owner shall maintain assessment payments and can choose to maintain, repair, replace, or sell the property.

2. Owner Fails to Comply. If the Owner of any residence fails to meet this obligation to remove all debris and other unsightly materials, or has not made

satisfactory arrangements to meet his/her obligations, the Association shall give written notice to the Owner of default, and the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the cleanup. If the Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the Owner of the residence shall be deemed to have assigned to the Association any right he/she may have to insurance proceeds that may be available because of the damage or destruction and expenses for the cleanup. The Association shall have the right to recover from the Owner any costs not paid by insurance, and shall have a lien on the Lot and residence to secure payment.



8 ARCHITECTURAL - AESTHETIC CONTROLS

8.1 The ARC. The architectural review and control functions of the Association shall be administered and performed by the Architectural Review Committee (the ARC), which shall consist of at least three (3) persons, who shall be Members of the Association but who are not on the Board. The Board of Directors of the Association shall appoint all Members of the ARC.

8.2 ARC Meeting. A majority of the ARC shall constitute a quorum to transact business at any meeting of the ARC, and their action at any duly noticed meeting shall constitute the action of the ARC. Notice of all meetings of the ARC shall be given by, at a minimum, posting conspicuously in the community at least 48 hours in advance.

8.3 Compensation. The Members of the ARC shall receive no compensation for services other than reimbursement for actual expenses approved in advance by the Board of Directors incurred by them in the performance of their duties.

8.4 Professional Services. The ARC shall, with the prior approval of the Board of Directors, have the power to engage the services of professionals for purposes of aiding the ARC in carrying out its functions.

8.5 ARC Powers and Duties.

A. Architectural Planning Criteria. From time to time, the ARC shall recommend, to the Association's Board of Directors, the creation or modification of items to the Architectural Planning Criteria.

1. Board Adopted. Any Architectural Planning Criteria or modifications or amendments thereto shall be consistent with the provisions of all applicable governmental authorities, and the Association Documents and shall not be effective until adopted by a majority of the Association's Board of Directors at a meeting duly called and noticed as required by law and at which a quorum is present.

2. Notice. Notice of the adoption, modification or amendment to the Architectural Planning Criteria, including a verbatim copy of such adoption, change or modification, shall be delivered to each Member at least thirty (30) days prior to the Board Meeting at which such action is to occur. However, receipt of notice of a Board meeting concerning the Architectural Planning Criteria or a copy of any adoption of or modification or amendment to the Architectural Planning Criteria shall not affect the validity of such change or modification.

B. ARC Form Submission. The Owner shall submit to the ARC a completed ARC form for any building, structure, landscaping, or other improvement proposed to be erected or altered to the exterior or other work which alters the exterior appearance of any structure or Lot, or that may affect storm water flow across the Lot. The ARC may also require submission of samples of building materials or colors proposed for use on any Lot, and may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work.

C. ARC Review. The ARC shall review all plans submitted to it for any proposed improvement, alteration, or addition based on the Association Documents including the Architectural Planning Criteria, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes of all applicable governmental authorities.

D. ARC Approval – Disapproval. The ARC shall have up to 30 days after delivery of all required information, plans, and materials to approve or deny any improvement or structure of any kind in accordance with the Association Documents and the Architectural Planning Criteria. A copy of an ARC form signed by ARC shall be evidence of approval or disapproval by the ARC to the Owner.

1. ARC Signatures. In addition to signatures on an ARC form, electronic means of verification from ARC Members shall be acceptable such as email, text, and fax.

2. Grievance. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within thirty (30) days after notification of the decision. The determination by the Board, upon prompt review of any such decision, shall, in all events, be final, and shall not be unreasonably delayed.

E. Enforcement. The Board has full authority to enforce any decisions of the ARC as per the approved Architectural Planning Criteria and the Association Documents.

8.6 Codes. All building and structures erected or constructed, and landscaping shall conform to the building codes of all applicable governmental authorities and the Association Documents.

8.7 VariANCES.

A. Circumstances for VariANCES. The ARC may authorize variANCES from compliance with any of the architectural provisions of the ARC Documents and the Architectural Planning Criteria form when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental situations hinder a proposed change negatively and the ARC agrees the proposed change is acceptable. The variance must be signed by at least two (2) Members of the ARC. If such variANCES are granted, no violation of the covenants, conditions, and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variANCES were granted.

B. Particular VariANCE. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration or the Architectural Planning Criteria for any purpose except as to the particular property and particular provisions thereof covered by the variance, nor shall it affect in any way the Owner’s obligation to comply with all governmental laws and regulations affecting his/her use of the Lot, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

C. Overruling. The Board of Directors may overrule and void any variance granted by the ARC if such action is taken within thirty (30) days from the date the variance is granted.

8.8 Non-liability of ARC Members. Neither the ARC nor any Member thereof, nor its duly authorized ARC representative, shall be liable to the Association or any Owner or any other person or entity for any loss, damage, or injury arising out of or in any way connected with the performance or nonperformance of the ARC’s duties hereunder, unless due to the willful misconduct or bad faith of the ARC Member, and only that Member shall be liable therefore.

8.9 Owner’s Responsibilities during project:

A. Site Appearance. Construction site shall be kept clean, neat, and in an orderly fashion throughout the entire construction process.

B. Common Areas. The Owner shall be responsible for keeping the streets, curbs and storm drains clean throughout the entire construction phase and landscaping.

C. Damages Liability. Any damage to street, curb, storm drain, light posts, driveways, etc. to Common Grounds or other Lots shall be the responsibility of the Owner and repaired to its condition prior to the damage at his/her expense and to the satisfaction of the Owner of such damaged property.

D. ARC Final Inspection. No dwelling unit shall be considered completed until ARC approves the exterior appearance of the home and the Lot.



9 SURFACE WATER MANAGEMENT SYSTEMS, LAKES, RETENTION PONDS.

A. Owners' Restrictions.

1. Water Flow. No structure of any kind shall be constructed or erected in or on, nor shall an Owner in any way change, alter, impede, revise, or otherwise interfere with the flow of volume of water in any portion of any water management area including, but not limited to swales, drainage ways, or wet retention areas intended for the accumulation of runoff waters, without the specific written permission of the Board. Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any Stormwater Management Systems, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including South Florida Water Management District.

2. Lot Size. No Lot shall be increased in size by filling in any pond or other water retention or drainage areas that it abuts. No person shall fill, dike, rip-rap, block, divert, or change the established water retention and drainage areas that have been or may be created without the prior written consent of the Board and SFWMD.

3. Irrigation. No person other than the Association may draw water for irrigation or other purposes from any pond, or other water management area.

B. Association Responsibility. All Stormwater Management Systems and Conservation Areas will be the ultimate responsibility of the Association and the Association has an easement over all properties in the community for the purpose of fulfilling this responsibility. No Owner or other person shall unreasonably deny or prevent access to water management areas for maintenance, repair, or landscaping purposes by the Association or any appropriate governmental agency that may reasonably require access. The Association may enter any Lot and make whatever alterations, improvements or repairs deemed necessary to provide, maintain, or restore proper surface water management. The costs of such water management maintenance and operation shall be an expense of the Association.

C. Proviso. Regardless of any other provision in this Declaration, as amended, no amendment of the Association Documents by any person, and no termination or amendment of this Declaration can be effective to change the Association's responsibilities for the Stormwater Management System, unless the amendment has been consented to in writing by the SFWMD. Any proposed amendment which would affect the Stormwater Management System, must be submitted to the SFWMD for a determination of whether the amendment necessitates a modification of the surface water management permit.



10. MEMBERS RESTRICTIONS. The following rules and standards apply to Members of the Mariner’s Cove Homeowners’ Association of Lee County and shall be enforced by the Association as provided herein:

10.1 Home.

A. Residential Home. Each home shall be a one story home used as a residential single-family home and for no other purpose. However, a “no impact” or “low impact” home based business in and from a home is allowed. Such uses are expressly declared customarily incident to residential use.

B. Prohibited Business. Examples of businesses which are prohibited and are considered “impact” businesses, are businesses or commercial activity or ventures that create excessive customer traffic to and from the home, create noise audible from outside the home, or generate fumes or odors noticeable outside the home, or other activities as determined by the Board of Directors, including but not limited to: a home day care, beauty salon/barber, product sales from the home.

10.2 Walls, Fences, Privacy Screens, Trellis, Landscaping. Privacy screen, wall, fence, trellis, tree planting, landscaping, and other such items need approval in writing by the ARC.

10.3 “For Sale/Lease” Sign. Owner may place one sign (“For sale”, “For rent”, “For Lease”) with contact names and phone numbers. The sign shall be placed in the window or outside up against the front and parallel to the home. The Association shall have the right to remove signs that fail to comply with standards set by the Association.

10.4 Flags.

A. Portable: Any homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than 4 1/2 feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, Coast Guard, a POW-MIA flag, or a Sport flag.

B. Flagpole: Any homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner’s real property, if the flagpole does not obstruct sight lines at intersections and is not erected within or upon an easement. The homeowner may display in a respectful manner from that flagpole one official United States flag, not larger than 4 1/2 feet by 6 feet, and may additionally display one official flag of the State of Florida and/or the United States Army, Navy, Air Force, Marines, Coast Guard, POW-MIA flag, or a Sport flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the county or municipality in which the flagpole is erected and all setback and locational criteria contained in the Association Documents.

10.5 Garbage, Recyclables, Large Items, Hazardous Materials.

A. Occupants of residence shall be responsible for placing refuse/recycles in the proper containers provided by the contracted company. Large items, such as but not limited to: water heaters, washers, dryers, refrigerators, stoves, furniture, shall be placed at the designated area adhering to the refuse company's procedure.

B. **Hazardous Waste.** Proper disposal of hazardous materials shall be the responsibility of the Owner and recommendations are available from the Association. Disposal of hazardous materials including, but not limited to items such as motor oil, gasoline, propane tanks, oil based paints, batteries, and household chemical wastes is prohibited on Association Common Areas, in the dumpster's and in the dumpster area.

10.6 Driveways and Parking Areas. Owner's driveways and parking areas must be paved with concrete. Driveways must be kept clean and free from excessive oil, rust, or other unsightly stains. Maintenance and repair of Owner's driveways shall be the Owner's responsibility. Owners that lease their homes must provide a concrete parking area on the Lot for their Lessee.

10.7 Vehicles and PODS.

A. **Vehicle Description.** Passenger automobiles, SUV's, vans, light pickup trucks with single rear wheels of no more than one (1) ton designation, and motorcycles, in a presentable condition shall be permitted. Vehicles must have up to date visible registration plates and be operational. No vehicle of any type, visible to others, which is abandoned or inoperable, shall be stored or kept on any Lot within Mariner's Cove.

B. **Commercial Vehicle.** No commercial vehicle of any kind shall be parked in the Community except for construction or service vehicles temporarily present on business. The term "commercial vehicle," as restricted under this section, is defined as meaning all vehicles of every kind whatsoever which, from viewing the exterior of the vehicle or any portion thereof, shows or tends to show any commercial markings and/or a business sign on the vehicle.

C. **Special Vehicles.**

1. **Campers, Trailers, Semi-tractor, RVs.** Semi-tractor trailers, campers, buses, motor homes, truck campers, pull behind trailers, and the like may be parked in the community for loading and unloading purposes only with a maximum of a two (2) days allowed.

2. **Golf Cart.** Golf cart shall be powered by electricity, has the required safety equipment, has the Lot# affixed to the golf cart, and is registered with the Association. Only persons 16 years of age or older are allowed to operate the cart. All liability will be the sole responsibility of the Owner.

3. **POD.** Members shall make arrangements with the Association prior to having a POD brought into the community.

D. Vehicle Parking.

1. **Owner's Lot.** Motor vehicles, as per 10.7(A), shall be parked completely inside an Owner's Lot on a cement pad. Parking on lawns or landscaped areas of Lot is prohibited.

2. **Common Areas.** Motor vehicles, golf carts, and bicycles are restricted to daytime parking on Common Areas such as but not limited to: boaters, swimmers, shuffleboard events, Clubhouse events, and Laundromat. Overnight and overflow parking may be restricted by Rules and Regulations as needed.

E. Vehicle Noncompliance. Any vehicles parked in violation of this Section shall be subject to being towed away at the Owner's expense.

10.8 Boat/Jet Ski and Boat/Jet Ski Trailer. Boat, jet ski, and boat/jet ski trailer, can only be stored on a concrete pad. Boat/Jet ski must have up to date visible registration tags and both boat/jet ski and trailer must be operational. No boat/jet ski of any type, visible to others, which is abandoned or inoperable, shall be stored or kept on any Lot within Mariner's Cove.

10.9 Nuisances.

A. Obnoxious or offensive activity. No obnoxious or offensive activity, noise or sound shall be carried on within Mariner's Cove including any Owner's Lot. Nor shall any Owner use his/her Home, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the Occupant of another Home, or in a manner which would not be consistent with the maintenance of the highest standards for a first-class residential community, nor shall any Owner permit a Lot to be used in a disorderly or unlawful way. The use of each Home shall be consistent with existing laws and the Association Documents, and Occupants shall at all times conduct themselves in a peaceful and orderly manner.

B. Solicitation. No solicitation will be allowed at any time within the community.

C. Nuisance Determination. The Board of Directors' determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms.

10.10 Antennas and Satellite Dish. An Owner may install, on his/her home, a radio aerial, TV antenna, or satellite dish. However, if any such equipment causes interference to any electronic systems in the park, the Owner must remedy the problem or remove the equipment in its entirety within ten (10) days of the Board giving notice.

10.11 Clothes Drying Area. Only one (1) standard umbrella type clothes drying line or rack

is permitted and it shall only be placed in the rear of the Lot.

- 10.12 Lighting.** All exterior lighting of structures or landscaping shall be in accordance with plans approved by the ARC. No spotlights, floodlights or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be unreasonably reflected on any other Lot or upon the improvements thereon, or upon any Common Areas or any part thereof, without the approval of the ARC. Other types of low intensity lighting, including normal and customary Christmas or other holiday decoration, which do not unreasonably disturb other Owners or Occupants of the Community shall be allowed.
- 10.13 Access Ramp.** Any Lot Owner may construct an access ramp if a resident or Occupant of the Lot has a medical necessity or disability that requires a ramp for egress and ingress. The ramp must be as unobtrusive as possible, be designed to blend in aesthetically if reasonably practicable, and be reasonably sized to fit the intended use.
- 10.14 Pets or Animals.** No pets or animals of any nature may be harbored, kept, or maintained on any Lot or on any area within the Community.
- 10.15 Solar Heating Systems.** In approving the installation and location of any solar heating systems, the ARC and the Board shall comply with all applicable laws, whether state or federal.
- 10.16 Maximum Number of Lots Owned.** No Owner may hold a legal or equitable or contractual interest in more than two (2) Lots within Mariner's Cove at the same time. Further, no person who is related to a Lot Owner (by blood (including parent, child, sibling, aunt, uncle and first cousin), by marriage, or by adoption) and no person who has a contractual relationship with another Lot Owner pertaining to Lot ownership in Mariner's Cove, shall be permitted to own a Lot, unless said person acquires and actually uses said Lot as a bona fide residence for said person. It is the intention of this clause that Owners shall only own a maximum of two (2) Lots and that groups of Lots shall not be owned or controlled by related or affiliated individuals, families, or artificial entities and used for investment/rental purposes. Owners of two (2) Lots, with a home on each Lot, may only use one home for leasing, and the other may only be used as a personal residence of such Owner. The Association is specifically exempted from this provision.
- 10.17 Compliance with Association Documents.**
- A. The protective covenants, conditions, restrictions, and other provisions of the Association Documents shall apply to Owners and all persons to whom any Owner has delegated his/her right of use in and to the Common Areas, as well as to any other person occupying any home under lease from the Owner or by permission or invitation of the Owner or his/her Tenants, and Guests. Failure of any Owner to notify any person of the existence and content of the rules, covenants, conditions, restrictions, and other provisions of the Association Documents shall not in any way act to limit or divest the

Association of the power to enforce those provisions. Each Owner shall be responsible for any and all violations by his/her family, Tenants, Guests, and invitees at all times.

B. Occupants/residents in Mariner’s Cove derive their privileges exclusively from those available to the Owner/Member of the home in which they reside. Unless specifically waived by the Board in writing, any suspension of privileges of an Owner, shall also be a suspension of privileges for all Occupants of the Home, including Tenants.



11. 55 OR OVER AGE COMMUNITY.

11.1 Fair Housing Definitions.

A. “**Act**” shall mean and refer to the (Federal) Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995 (Pub.L. 100-430, approved September 13, 1988; 102 STAT. 1619)

B. “**Federal Regulations**” shall mean and refer to the Federal Rules and Regulations promulgated by the Department of Housing and Urban Development, which became originally effective on March 12, 1989 and as subsequently amended.

C. “**55 or Over Housing Exemption**” shall mean and refer to the exemption for housing for older persons (55 or over housing) as is provided for in Section 807(b)(2)(C) of the Act.

11.2 Statement of Intent.

A. **Housing for Older People.** It is hereby declared by the Mariner’s Cove Homeowners Association of Lee County, Inc., that the Association desires and intends to provide housing for older persons, as defined in the Fair Housing Amendments Act of 1988 (hereinafter referred to as the “Act”) and the Federal Rules and Regulations (hereinafter referred to as the “Federal Regulations”) as promulgated by the Department of Housing and Urban Development (hereinafter referred to as “HUD”).

B. **55 or Over Housing.** It is more specifically the desire and intention of this Association to meet the exemption for housing for older persons as is provided for in 24 CFR Part 100, Section 100.304 (hereinafter referred to as the “55 or Over Housing Exemption”). Section 100.304 implements Section 807(b)(2)(c) of the Act which exempts housing communities intended and operated for occupancy by at least one (1) person 55 years of age or over per unit that satisfy certain criteria. In this endeavor, occupancy restrictions and procedures shall govern.

C. **Publish Intentions.** Further, in addition to Amendments to the Bylaws, the Association shall do whatever is required by the Act and Federal Regulations to publish its intention to comply with, and adhere to, policies and procedures which demonstrate an intent to provide housing for persons 55 years of age or over.

D. The Act and Federal Regulations. The Act and Federal Regulations, as amended from time to time, are hereby incorporated by reference into this document. To the extent that any of these provisions relating to the Act appear to conflict with any language in the Association Documents governing Mariner's Cove Homeowners Association of Lee County, said provisions shall be deemed federally preempted by the Act, null and void and of no force or effect whatsoever.

11.3 Restrictions to ownership and occupancy.

A. Proof of Age.

1. Previously Established. All persons occupying units after September 24, 2001 shall deliver to the Association, a completed Association Registration Form, a proof of age document, such as but not limited to, a driver's license, birth certificate, state ID, or passport, a Mariner's Cove Age Verification form, and any other documentation required by the Association.

2. Refusal of Age Verification. Any person(s) not providing such documentation, when and as requested by the Board of Directors, shall be validly presumed by the Association and by a Court of law to be under the age of 55 years, even though the persons may actually be 55 years of age or over.

3. Registration Required.

a. Owners. All Owners must register with the Association at the time of becoming an Owner. Periodic registration may be required as per Florida requirement to maintain 55 or over status.

b. Leasing. In the event of a lease, it shall be the responsibility of the particular Owner, not the Association, to provide the Lessee(s) and/or other Occupants of the unit with the registration form to complete and acquire proof of age verification for the Lessee(s) and all Occupant(s) and return to the Association at least five (5) days before the beginning of the leasing period.

4. Minimum Age Restrictions.

a. Permanent Occupants. No persons under the age of eighteen (18) years shall be permitted to permanently reside in the community.

b. Temporary Occupants. Persons, under the age of eighteen (18) years of age, may visit and/or reside in Mariner's Cove as per the Guest section of this document.

5. Other Occupancies. In the event of an existing ownership, use by Guests, or a sale, gift, or other transfer of title, and the age occupancy requirements are not

met, the Association may disapprove the transfer and shall be entitled to file for and obtain an injunction against the Owner(s) of the unit and all Occupants in the unit, removing the unauthorized Occupants (including the Owner(s)). In that event, if the Association prevails, the Owner(s) shall be responsible for costs and attorney's fees incurred by the Association in connection with its enforcement of the Association Documents.

B. Background Check. All persons, new to the Mariner's Cove community, including but not limited to, those who buy, lease, or receive title by devise or inheritance, and all proposed Occupants, must agree to a background check and each shall complete the Association Background Check form for the Association to run a Background Check. A Background Check fee to be established by the Board will be charged to the applicant(s). A personal interview with the applicant(s) will provide the applicant(s) an opportunity to respond to the Background Check information. Being convicted of, or having pleaded no contest to, the following, but not limited to the following, may be valid reasons for disapproval of occupancy by Owners, buyer(s), Lessees(s), and other Occupants within Mariner's Cove community:

1. A felony involving sexual battery, sexual abuse, or lewd and lascivious behavior;
2. A sexual offense regardless of when the offense occurred;
3. Violent crime(s) involving murder, personal injury, non-negligent manslaughter, rape;
4. Offenses against family and children

C. Ownership by Older Persons - Age 55. At least one (1) person age 55 years or older (hereinafter referred to as the "Primary Owner") must be a record title holder and must have at least fifty percent (50%) ownership of the Lot. The intent of this section is to require all Lots to be owned by at least one (1) person age 55 or over. A proof of age document such as but not limited to a driver's license, birth certificate, state ID, passport, Mariner's Cove Age Verification form, and any other documentation required by the Association shall be provided to the Association.

1. Exceptions to Section 11.3 C

- a. Previously established.** Section 11.3 C above shall not apply to any persons who have occupied or owned a unit prior to September 24, 2001, provided those persons did not lease or sell said unit after September 24, 2001. The Owner and new Occupant of any lease or sale after September 24, 2001 shall be subject to the provisions provided elsewhere herein.
- b. Surviving Spouse or Cohabitant.** Section 11.3 C above shall not be applicable in the case of the death of the Primary Owner/Occupant whose

surviving spouse or cohabitant is under 55 years of age provided that the surviving spouse or cohabitant resided with the Primary Owner/Occupant for two years before the Primary Owner/Occupant's death. Under such circumstances, the surviving spouse or cohabitant shall be allowed to continue to occupy the unit irrespective of age so as to prevent disruption of the live of the surviving spouse or cohabitant.

c. Recipient of Legacy. In the event that a Primary Owner dies and the Lot is inherited by an individual who is under 55 years of age, the recipient of a legacy shall be allowed to own the Lot, but the occupancy of the home shall be restricted as stated in this document 11.3 (D).

d. No "Set-Aside". This Section is not intended to establish a 20% "set-aside" for persons less than 55 years of age or families with children under the age of eighteen (18) years.

D. Occupancy by Older Persons – Age 55. Each home shall be used as a "single-family" residence with a maximum of four (4) Occupants with a majority of Occupants in the home being age 55 or over. Members shall keep the Association informed as to the identity and relationship of all persons who resides with the Member. The intent of this section is to require all Lots to be occupied by at least one (1) person age 55 or over. A proof of age document such as but not limited to a driver's license, birth certificate, state ID, passport, Mariner's Cove Age Verification form, and any other documentation required by the Association shall be provided to the Association.

1. Exceptions to Section 11.3 D

a. Previously established. Section 11.3 D above shall not apply to any persons who have occupied a unit prior to September 24, 2001 and continue to do so.

b. Surviving Spouse or Cohabitant. Section 11.3 D above shall not be applicable in the case of the death of the Primary Occupant whose surviving spouse or cohabitant is under 55 years of age provided that the surviving spouse or cohabitant resided with the Primary Occupant for two years before the Primary Occupant's death. Under such circumstances, the surviving spouse or cohabitant shall be allowed to continue to occupy the unit irrespective of age so as to prevent disruption of the live of the surviving spouse or cohabitant.

2. Additional Occupants. Even though a person under the age of 55 years but over the age of 18 is given exception status under Section 11.3 C or D, this shall not entitle additional persons to occupy the unit unless the additional person is 55 years of age or older.

3. Non-Occupancy Status. Each Owner shall notify the Association of any

periods of time the home is to be unoccupied for a period in excess of six (6) months. It is understood that this is a necessary requirement because the Federal Regulations require record keeping of occupied and unoccupied units.



12. **GUESTS.** This Section shall be in addition to other restrictions pertaining to Guests, which may be contained elsewhere in the Association Documents as amended from time to time.

A. **Not Guests.** The following persons are not considered a “Guest”:

1. **Service Person.** Professional and nonprofessional service person assisting the Occupant with personal needs will not be considered a Guest.

2. **Occupant.** An Occupant of a unit, registered as such with the Association, shall not be considered a Guest.

12.1 **Guest Visitation.** Guests may visit and/or reside in Mariner’s Cove as per the following requirements:

A. **Guest Registration Day Visit.** A Day Guest Registration form shall be completed for each daily visitation and will be counted as one day. A Guest Registration form is to be turned in to the office on visitation day. The office mail slot can be used anytime of the day. Each Guest will be independently recorded for counting of visitation days for the named Guest.

B. **Guest Registration Overnight Visit.** Guest Registration form for overnight visitations shall be completed showing starting date and ending date. The documentation of the visitation shall be based on the number of nights. The overnight Guest Registration form is to be turned in to the office on the first day of arrival. The office mail slot can be used anytime of the day. Each Guest will be independently recorded for counting of visitation days for the named Guest.

C. **Number of Visitations.** Guest visitations per Guest, day or overnight, shall not exceed thirty (30) days in the aggregate in any calendar year. The visitation time periods shall not be cumulative from year to year.

D. **Guest Informed of Association Documents.** Owners/Occupants must inform their Guests of the requirements for Guests which are contained in the Association Documents, and Guests must abide by the Association Documents.

12.2 **Guest Restrictions.** The restrictions on Guests in this Section shall be in addition to other restrictions that may be contained elsewhere in the Association Documents.

A. **Complete Guest Registration form.** The Owner or Tenant must complete Guest Registration form as stated in Section 12.1 and abide by the requirements.

B. Owner In Residence. When Owner/Primary Occupant is residing in the home:

1. **Guest visitations.** Guest visitations, day or overnight visit, must not create a nuisance or annoyance to other residents, nor prevent the peaceful enjoyment of the Common Areas, including but not limited to the pool, clubhouse, shuffleboard court, and other recreational areas. The Owner/Primary Occupant shall inform the Guest of Guest restrictions stated in the Association Documents. Guest, under 18 years of age when using the recreational facilities, must be accompanied by an adult.

C. Owner Not In Residence. When Owner/Primary Occupant is not residing in Mariner’s Cove, the Owner/Primary Occupant shall notify Association of Guest Visitation prior to commencement of visit.

1. **Guest visitations.** Guest visitations, day or overnight visit, in the absence of Owner/Primary Occupant shall require at least one Guest must be age 55 or over. The Guest Registration form must be turned in to the Mariner’s Cove office prior to or upon Guest’s arrival at Mariner’s Cove. The office mail slot can be used anytime of the day. Guest, under 18 years of age when using the recreational facilities, must be accompanied by an adult.

2. **Caretakers.** Owner/Primary Occupants may have their units inspected by caretakers, family members, etc.; however, such individuals shall not be permitted to use recreational facilities. No registration is needed.

3. **Unauthorized Person.** Any Guest not authorized pursuant to the terms of this Section shall be deemed improper, entitling the Association to bar access of the Guest to the unit and recreational facilities and shall entitle the Association to obtain an injunction removing the Guest and his/her personal belongings from the unit.

12.3 Contract/Covenant. Every Owner and Lessee shall be deemed to have a contract with the Association to ensure that the Guest occupancy requirement in Section 12 is met at all times. Furthermore, the Owner shall be responsible to ensure that his/her Lessee(s) comply with this Guest occupancy requirement.



13. LEASING OF DWELLING UNITS. The privilege of an Owner to rent or lease a home shall be allowed if the procedures as stated in the Association Documents are followed. The Association and its Management shall have the authority to approve all leases new or renewals, promulgate or use a uniform lease application, and gather information from the proposed Tenant(s) for Background Check (applicant(s) pays fee). An interview with all Occupants may be a condition for approval. The privilege may be revoked by the Association if the Owner abuses it, or fails or refuses to follow the required procedures.

13.1 Home Leasing Restriction. In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing of homes by their Owners shall be restricted as provided in this section.

A. Lease Entire Home. An Owner may lease only his/her entire home, and then only in accordance with this Section. An Owner of two properties shall only lease one unit.

B. AirBNB. Airbnb, a peer-to-peer online marketplace and homestay network that enables people to list or rent short-term lodging in residential properties, shall **not** be permitted.

C. Natural Person Age 55 or Older. The Lessee must be a natural person, age 55 or over, as opposed to an artificial entity such as a corporation, partnership, trust, etc., and no one under 18 years of age may reside as part of the lease agreement.

D. Time Restrictions

1. **Thirty Days.** No home may be leased for less than thirty (30) days.
2. **Eight Months.** Home may be leased for a maximum of eight (8) months in any twelve (12) month period. A Lessee(s) can reside within Mariner's Cove Community for a maximum of eight (8) months in any twelve (12) month period.
3. **No subleasing** or assignment of lease rights by any Lessee is allowed.

13.2 Procedure for Leasing of Lots.

A. Procedures before leasing

1. **Association's Lease Form/Registration Form.** Owner shall complete the Association Lease Form and Registration Form and return to Association at least five (5) days prior to the starting date of the lease to allow the Association to conduct a background check on all proposed Occupants as per the Association Documents.

2. **Tenant Agrees to Follow the Rules.** Lease will provide or shall be deemed to provide that the Tenant(s) has read and agreed to be bound by the various restrictions contained in the Association Documents such as but not limited to age restrictions, "No Pets" policy, use of Common Areas, speed limits, and Guest visitation. Lease shall further provide or be deemed to provide that any violation of the applicable Association Documents shall constitute a material breach of the lease and subject the Tenant to eviction. Any individual residing in a home for thirty (30) days or more in any calendar month shall be deemed a Tenant and subject to approval as required herein.

B. During Leasing Term

1. **Occupant Covenants.** All of the provisions of the Association Documents shall be applicable and enforceable against any person occupying a Lot as a Lessee, Tenant, or Guest to the same extent as against the Owner. A covenant on the part of each Occupant to abide by the provisions of the governing Association Documents, designating the Association as the Owner's agent with the authority to evict the Tenants in the event of breach of such covenant, shall be deemed to be included in every lease or rental agreement, whether oral or written, and whether specifically expressed in such agreement or not.

2. **Owner Restriction.** An Owner, whose home is leased, may not use the recreation or parking facilities during the lease term unless visiting another Member as a Guest. If an Owner has two properties, renting one and living in the other, this restriction does not apply.

3. **No Pet Policy.** "No Pet" policy shall apply to Lessee and any Guest.

4. **Violations by Tenants.**

a. **Owner's Responsibility.** If Tenants fail to abide by the applicable Association Documents, the Owner shall be responsible for the conduct of the Tenant. The Owner shall have the duty to bring his/her Tenants' conduct into compliance with the Association Documents by whatever action is necessary, including without limitation, the institution of eviction proceedings.

b. **Association Authority.** If the Owner fails to bring the conduct of the Tenant into compliance with the Association Documents, the Association shall have the authority to act as agent of the Owner to undertake whatever action is necessary to abate the Tenants' noncompliance with the Association Documents, including without limitations, the right to institute an action for eviction against the Tenant in the name of the Association. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions from the Owner in the same manner as common expense charges.

13.3 **Remedies for Non-Compliance.** The Association concurrently shall have any one or more of the following remedies for non-compliance in addition to those provided elsewhere in the Association Documents.

A. Injunction. In the event of a lease of a unit, and the occupancy and other requirements are not met as stated in the Association Documents, the Association shall be entitled to file for and obtain an injunction against the Owner of the unit or Lessees(s) and/or other Occupants of the unit, removing the unauthorized Lessee(s) and/or unauthorized Occupants.

B. Eviction. The Association shall also be entitled to evict the unauthorized Lessee(s) and other unauthorized Occupants of the unit, as agent for the Owner(s). This right of eviction by the Association shall apply after:

1. **Notice.** The Association mails notice to the Owner(s) by certified mail, return receipt requested, or provides notice by hand delivery of its intent to resort to its right to evict.

2. **Owner Fails to Evict.** Provided that the Owner fails to commence eviction proceedings on his/her own and fails to so notify the Association, within fourteen (14) days.

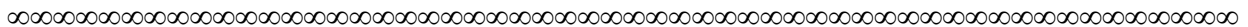
3. **Costs and Fees.** Costs and attorney's fees incurred by the Association in connection with the exercise of its remedies, provided that the Association prevails, shall be the responsibility of the Owner of the unit, and shall to the extent awarded by a Court under Chapter 83, Florida Statutes, shall also be the responsibility of the Lessees.

13.4 Association As Owner's Agent. All of the provisions of the Association Documents shall be applicable and enforceable against any person occupying a home as a Lessee or Guest to the same extent as against the Owner.

13.5 Collateral Assignment of Rents.

A. Collect Rent. In the event an Owner is in default in payment of assessments for common expenses or any other monetary amounts owed to the Association, the Association shall have the authority to collect rents directly from the Owner's Tenant. Upon demand by the Association the Tenant shall pay said rent to the Association. The procedures applicable to the collection of such rents shall be as provided by applicable Florida law. Such rental payments shall be collected in accordance with the procedures established by the Board of Directors and applied in accordance with the Association Documents until all past due amounts are paid in full.

B. Tenant Non-compliant. In the event such Tenant is given Notice by the Association of its right to collect the rent and fails to remit said rents directly to the Association within seven (7) days after the day the Tenant's next rental payment is due, the Association shall have the right to terminate the lease and evict the Tenant. For the purpose of such eviction, the Association shall be deemed to be an agent of the Owner/landlord. The authority granted in this Section is in addition to any authority granted by law.



14. SALES, TRANSFERS. The sale and transfer of Lots and Dwelling Units by any Owner shall be subject to the following provisions each Owner covenants to observe.

14.1 Association Approval For Sales By Owner. The Owner, requesting the transfer, shall have paid in full all monies owed to the Association. The transfer of ownership of Lot needs the approval of the Association and shall be obtained by following the proper procedure.

A. Notice to Association. The Owner, intending to make a bona fide sale or other title transfer of his/her Lot or any interest in it, shall provide the following prior to the closing:

1. **Disclosure Summary** Verification by the buyer of having received a copy of the Association Documents, including Owner's obligations to pay Association;
2. **Application.** Complete the Mariner's Cove Application for Approval of Home Sale form;
3. **Age Proof.** Provide proof of age of prospective buyer and Occupants, one person must be age 55 or over and no Occupants under 18 years of age;
4. **Background Check.** Prospective buyer completes the Background Check form;
5. **Interview.** Prospective buyer may arrange for a personal interview with Association representative, if needed.

B. Association's Approval. The Association's approval of the application for purchase is required before ownership of a Lot shall be transferred. Within fifteen (15) days after receipt of the required information, the Board of Directors must either approve or disapprove the proposed transaction.

14.2 Transfer by Devise or Inheritance.

A. An Owner, who has obtained his/her title by devise or inheritance, or operation of succession laws, shall give to the Association, in writing, notice of the acquiring of his/her title and a certified copy of the instrument evidencing the Owner's title. The recipient of title shall provide the following:

1. **Disclosure Summary.** Owner shall complete the Mariner's Cove Disclosure Summary form acknowledging an understanding of the Mariner's Cove HOA policies;
2. **Registration.** Owner shall complete the Mariner's Cove Registration form;
3. **Age Proof.** Owner must provide proof of age of Owner and Occupants (one person must be age 55 or over and no Occupants under 18 years of age). The recipient of devise or inheritance and his/her household shall be allowed to own the Lot, but the occupancy of the dwelling is restricted by the Association Documents.

- 4. **Background Check.** Owner shall complete the Background Check form;
- 5. **Interview.** Owner may arrange for a personal interview with a Mariner's Cove representative.

B. Association's Review. The Association's Review is required before any occupancy based on such ownership. Within fifteen (15) days after receipt of the required information, the Board of Directors must either approve or disapprove the transaction.

C. First Mortgagee Transferee. A transferee of a first mortgagee shall be required to be approved by the Association and comply with all other terms of the Association Documents as a condition of ownership and holding title to a Lot in the Association.

14.3 Failure to Give Notice. If the above required notice, 14.1 A and 14.2 A, is not given to the Association, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a unit, the Association at its election and without notice may approve or disapprove the transaction or ownership. If the Board of Directors disapproves the transaction or ownership, the Board of Directors shall proceed as if it had received the required notice on the date of such disapproval. Any sale, lease, mortgage, or other transfer of ownership or possession not authorized pursuant to the terms of the Association Documents shall be voidable unless subsequently approved by the Association.



15. INSURANCE. In order to adequately protect the Association and its Members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 Association; Required Coverage. The Association shall maintain adequate insurance, such as but not limited to, property, liability, and bonding. The Board of Directors shall determine the amounts of coverage annually. The insurance carried by the Association shall afford at least the following protection:

A. Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.

B. Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Owners as a group to an Owner.

C. Automobile. The Board of Directors may determine automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles when used for

Association business, in such limits of protection and with such coverage as required by law.

D. Compensation. The Association may maintain Workers' Compensation insurance and shall if required by law.

E. Directors' and Officers' Liability Insurance. The Association shall maintain Directors and Officers Liability Insurance protecting the Directors for losses or advancement of defense costs in the event an insured suffers such a loss as a result of a legal action brought for alleged wrongful acts in their capacity as Directors and Officers. Intentional illegal acts are not covered under this policy.

F. Bonding. The Association shall maintain insurance or a fidelity bond for all persons who control or disburse funds of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in custody of the Association or its management agent at any one time.

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

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

15.3 Insurance Proceeds.

A. All insurance policies purchased by the Association shall be for the benefit of the Association, the Owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, to disburse them for the benefit of the Owners and their respective mortgagees.

B. Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying costs shall be payable to the Association or as otherwise provided by law.

15.4 Damage to Common Areas. Where insured loss or damage occurs to the Common Areas or Association property, it shall be mandatory for the Association to repair, restore, and rebuild the damage caused by the loss, and the following procedures shall apply:

A. Estimates-Repairs. The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract

C. **Amendment Certificate.** A copy of each adopted amendment shall be attached to a certificate stating that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and which shall be executed by the President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida. Within thirty (30) days after recording an amendment to the Association Documents, the Association shall provide copies of the amendment to the Members.

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17. **GENERAL PROVISIONS.**

17.1 **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by Association unless approved by a majority of the votes eligible to be cast by the Members of the Association.

A. **Litigation Exceptions.** This Section shall not apply, however, to:

- 1. **Enforcing Association Documents.** Actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens);
- 2. **Collection of Assessments.** The imposition and collection of Assessments and other Association charges;
- 3. **Ad Valorem Taxation.** Proceedings involving challenges to ad valorem taxation, or;
- 4. **Counterclaims.** Counterclaims brought by the Association in proceedings instituted against it.

17.2 **Attorney Fees.** In any legal proceeding arising out of the Association Documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and its reasonable attorney fees.

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

17.4 **Severability.** Should any covenant, condition, or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of the Association Documents be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be

severable and which shall remain in full force and effect. Nothing contained in the Association Documents is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void as to such challenged provision or vested rights, but shall have no effect on the remaining provisions herein.

17.5 Interpretation; Disputes.

A. Interpretation. The Board of Directors is responsible for interpreting the provisions of the Association Documents, promulgated by the Association. Such interpretations shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

B. Disputes. In the event, there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in the Association Documents, the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

17.6 Not-for-profit Status. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its not-for-profit status under applicable state or federal law.

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

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

17.9 Applicable Statutes. The validity, application, and construction of this Declaration, as amended, and its exhibits shall be governed by the Laws of Florida, as may be amended from time to time.



18. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, SECOND AMENDED AND RESTATED BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT OF THE ASSOCIATION, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE “ASSOCIATION DOCUMENTS“), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR

SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

- 18.1 **ASSOCIATION DOCUMENTS.** IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;
- 18.2 **ENFORCING STATE/FEDERAL LAWS.** THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, LEE COUNTY, VILLAGE OF ESTERO AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.
- 18.3 **ASSESSMENTS.** ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON (S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.
- 18.4 **OWNERS.** EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.
- 18.5 **ASSOCIATION INCLUDES.** AS USED HEREIN “ASSOCIATION” SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION’S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.



IN WITNESS WHEREOF, Mariner's Cove Homeowners Association of Lee County, Inc., a Florida Corporation, as agent for its Members, hereby acknowledge and file the foregoing Declaration, under the laws of the State of Florida, this _____ day of _____ 2018.

Board of Mariner's Cove Homeowners Association of Lee County, Inc.

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

By: _____

Witnesses:

By: _____

By: _____

STATE OF FLORIDA COUNTY OF LEE

Each person providing documentation as to his/her identity acknowledged the foregoing instrument before me

this _____ day of _____, 2018.

Signature of Notary Public

Print Name

Print, Type, or Stamp Commissioned Name of Notary Public (Affix Notarial Seal)