

**STATE OF FLORIDA  
COUNTY OF OKALOOSA**

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS & EASEMENTS OF WATER OAKS  
REGATTA HOMEOWNERS ASSOCIATION  
(With latest amendments)<sup>1</sup>**

**PREAMBLE**

WITNESSETH:

Declarants own certain property in Okaloosa County State of Florida more particularly described in Appendix A hereto, being the lots and common elements of WATER OAKS TOWNHOMES, Plat Book 7 page 67, WATER OAKS II TOWNHOMES, Plat Book 8, pages 19 & 20, WATER-OAKS III TOWNHOMES Plat Book 9 Page 86. WATER OAKS IV TOWNHOMES, Plat Book 9, Page 66, all in the Public Records of Okaloosa County Florida, the “buffer area” which consists of certain property deeded by First Mutual Savings & Loan Association of Florida to Water Oaks Regatta Homeowners Assn Inc. by a deed dated May 28, 1987 recorded at Official Records Book 1404 pages 1 – 3, all as shown as Appendix “A” hereto.

NOW THEREFORE Declarants hereby declare that when lots in the property described above shall be sold they shall be conveyed subject to the readopted restrictions in the SECOND AMENDMENT to the aforesaid Original Declaration and this THIRD AMENDMENT to Conditions and Covenants, all of which are for the purpose of protecting the value and desirability of the property and to accomplish the safety objectives stated and defined in the text of these instruments where applicable. The aforesaid restrictions, covenants and conditions shall run with the title to all the real property described above and shown on Appendix A and shall be binding on all parties having any right, title and interest in the property or any part thereof, their heirs, successors and assigns, inures to the benefit of Declarants and their successors in title, and others described herein, but the

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<sup>1</sup> In 2003, the Association undertook to revamp its use restrictions (Article X). That task was completed and the amendment recorded in Okaloosa County Records at Book 2445, pages 3425-3471 on June 13, 2003. A year later, the Association amended the Preamble and Articles I through IX and XI in the Original Declaration by substituting a new Preamble, and new Articles I through IX and XI through XIV in place of the original articles--incorporating therein the previous amended to Article X by reference. These amendments were recorded in Okaloosa County Records at Book 2539, pp. 3323-3389. As of March 2007, no further amendments have been made to the Covenants.

lot owners shall not have an undivided legal or equitable interest in the buffer area as that term is herein defined.

## **ARTICLE I – DEFINITIONS**

Section 1. “Association” is Water Oaks Regatta Homeowners Association, Inc., a Florida nonprofit corporation, its successors and assigns.

Section 2. “Buffer Area” property shall mean the property described in that certain conveyance recorded in Official Records Book 1404 at page 1-3, Public Records of Okaloosa County Florida, dated May 28, 1987 being three and one half (3 ½) acres of vacant land more or less which was purchased through a special assessment upon the Association’s promise to the membership that the land would at all future times remain vacant and be used only as a buffer for the property.

Section 3. “Casualty Damage” includes damage from fire, windstorm, lightening, collapse, and vehicular impact with structures including ship to shore collisions, falling objects, and termites.

Section 4. “Common Area” shall mean all the property (including the improvements thereon) owned by the Association for the common use and enjoyment of the “Owners” as such common areas shown in the plats of Water Oaks Townhomes identified in Appendix A and also the maintenance if required of the access roads to the subdivision or any of its improvements. Common Areas shall also include all real property, other than the buffer area, which is now or hereafter owned or leased by the Association or dedicated for the use or maintenance by the Association or its members, regardless of whether title has been conveyed to the Association.

Section 5. “Lot” shall mean and refer to the parcels of land described in the plats of the subdivision as identified in Appendix A hereto.

Section 6. “Mutual Walkway” shall include only the board walk access servicing lots 25 through 28 as shown by the plat of Water oaks III Townhomes, Plat Book 8, page 86, Public Records of Okaloosa County Florida. This “Mutual Walkway” shall not be “common area”, but shall be for the use of the owners of the above described lots who shall have the right to attach the same to the boardwalk servicing the gazebo on the common area marked as a membership common area “park” on the above referenced plat.

Section 7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any platted lot which is a part of the property which is subject to this Declaration.

Section 8. "Prior Mortgagee" shall mean any mortgagee who has a mortgage lien duly recorded upon any of the lots herein prior to the recordation of this amendment.

Section 9. "Properties" shall mean and refer to that certain real property herein above described in the preamble hereto and set forth in the legal description (Appendix A) and such additions hereto as may hereafter be brought within the jurisdiction of the Association.

Section 10. "Voting Owner" means an owner who's right to vote has not been suspended in accordance herewith.

## **ARTICLE II – PROPERTY RIGHTS**

Section 1. **RIGHT TO USE COMMON AREAS.** Every owner shall have the right and an easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title of every lot, subject to the following provisions:

(a) **SUSPENSIONS.** The right of the Association to suspend the right to use the common areas by an owner (or anyone claiming the right to use the common areas) in accordance with the provisions of Article XI of this Declaration.

(b) **TRANSFER OF PUBLIC AGENCY.** The Association may dedicate or transfer any part of the Common Area to any public Agency, authority or utility for such purposes and subject to such conditions as may be agreed by a majority of the voting lot owners at a meeting where notice of an intent to seek such authorization has been previously given. If authorized the same may be granted by a deed or dedication signed by the president and attested by the secretary. However, a notarized certificate by the clerk of the Association showing the name of each owner voting for the same either in person or by proxy, that each are "voting owners" shown by its records, confirming they constitute the majority required hereby whose votes were recorded at a meeting where the notice required hereby was duly given shall also be recorded with such instrument. A document bearing these signatures shall be maintained as a part of the permanent records of the Association.

Section 2. **DELEGATION OF RIGHT TO USE COMMON AREA.** Any owner may delegate, in accordance with the by-laws, his right of enjoyment to the common area and facilities to resident members of his family, tenants, occupants or contract purchasers who reside with owner's

consent on the lot. Procedures relating to guests shall be fixed by rules adopted by the Board of Directors.

### **ARTICLE III – MEMBERSHIP AND VOTING RIGHTS**

Section 1. OWNER AN ASSOCIATION MEMBER. Every owner of a lot which is subject to assessment shall be a member of the Association. Ownership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment, but the right to use common elements may be subject to suspension, or equitable execution as part of the foreclosure of certain liens as hereinafter authorized: PROVIDED that the same shall not operate to prejudice the rights of any prior mortgagee that exist under a Planned Unit Development Rider duly recorded prior hereto.

Section 2. VOTING MEMBERSHIP. The Association shall have one (1) class of voting membership. All members shall be owners of lots. When more than one person has an interest in any lot, all such persons shall be members. The vote for each lot shall be exercised as such persons may determine, but in no event shall more than one vote be cast with respect to any lot.

#### **Section 3. SUSPENSION OF VOTING RIGHTS.**

(a) UNPAID ASSESSMENTS. The rights of an owner to vote may be suspended by the Board of Directors for the non-payment of assessments if the same have remained due and unpaid for over ninety (90) days for so long as the same shall remain unpaid without regard to the procedures specified in Article XI.

(b) OTHER VIOLATIONS. The rights of an owner to vote may also be suspended for the matters specified in Article XI, Section 1, subsections (b) through (f) in accordance with the procedures prescribed thereby in Article XI, sections 2 et. seq.

Section 4. RESTORATION OF VOTING RIGHTS. The Directors shall before each annual meeting review any such suspensions and if the money in question has been paid, satisfactory arrangements have been made for its payment, or the violations or conduct which resulted in the suspension have been abated or cured to their satisfaction, the member's voting rights shall be restored forthwith and the member so notified.

### **ARTICLE IV - COVENANTS FOR ASSESSMENTS AND LIENS**

Section 1. OBLIGATION TO PAY ASSESSMENTS AND RELATED LIEN. Each owner of any improved lot, by acceptance of a deed

thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association (1) annual assessments or charges, (2) special assessments for capital replacement and improvement items and (3) special casualty assessments. Such assessments are to be established and collected as hereinafter provided. The annual and special assessments together with interest, cost and reasonable attorney fees incurred in the collection thereof with or without litigation, shall be a charge on the lot and shall be a continuing lien upon the lot against which each assessment is made. If a lien is not paid within one year from recordation the lien shall be deemed to be re-recorded within that time, and so shall, along with accrued interest, remain a lien upon the property from year to year until paid.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents on the properties, for the improvements and maintenance of the common area, the buffer area, and in the instance of assessments under section 4 hereof may be used for purchase of contiguous adjacent areas for the common use and enjoyment of the association.

Section 3. ASSESSMENTS; MAXIMUM ANNUAL; SPECIAL; VOTING.

(a) MAXIMUM INCREASE BY BOARD. The maximum annual assessment of all lots subject to this Declaration may be increased by the Board of Directors each year not more than ten percent (10%) above the maximum assessment for the previous year without the vote of the membership.

(b) ANNUAL ASSESSMENT. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum annual assessment.

(c) INCREASE OF ANNUAL ASSESSMENT BY MEMBERSHIP. The annual assessment may be increased above the 10% by a vote of 2/3 of the voting owners at a duly called meeting for this purpose.

Section 4. SPECIAL ASSESSMENTS; CAPITAL IMPROVEMENTS; CASUALTY; ACQUISITIONS.

(a) SPECIAL ASSESSMENTS. In addition to the annual assessments authorized above the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements upon the common area, including fixtures and personal property related thereto, providing that any

such assessment shall have been approved by a vote of two-thirds (2/3) of the voting owners in person or by proxy, at a meeting duly called for this purpose at which a quorum is present. This assessment may at the discretion of the Board of Directors be made payable in installments over a number of years.

(b) CASUALTY ASSESSEMENTS. A casualty assessment may be made by a majority (51%) of the voting owners of the Association in the event of fire, flood, tornado, hurricane or other natural disaster on a one time basis for the purpose of meeting extra-ordinary non-capital expenses secondary to such an incident(s) only. Owners may vote by proxy, including faxed proxies.

(c) ACQUISITIONS. A special assessment may be levied to purchase adjacent land, easements, or water rights, provided that any such assessment shall have been approved by a vote of two thirds (2/3) of the voting owners casting their ballots in person or by proxy at a meeting duly called for this purpose at which a quorum (as herein defined) is present. This assessment may be made payable over more than one year, and shall be so payable if it is in an amount that is greater than the amount of the maximum annual assessment. The land so purchased shall be for the use of the Association but shall not create an undivided legal or equitable interest on the part of any owner unless it is annexed as a part of the common elements in accordance with Article XIV, section 2.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 hereof shall be sent to all owners not less than thirty (30) nor more than sixty (60) days in advance of the meeting. For the purposes of subsection 3 and 4 hereof a quorum at such a noticed meeting shall consist of two thirds (2/3) of the voting owners, voting in person, or absentee (sic, by proxy?), of the total voting owners of the Association. For all other purposes a quorum shall be Thirty Percent (30%) of the voting owners, or such lesser figure as may from time to time be specified in the bylaws.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual, special and casualty assessments must be fixed at a uniform rate for all lots and the Board of Directors may allow payment of annual, special and casualty assessments on a quarterly basis.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSEMENTS. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date of the annual assessment shall be

established by the Board of Directors and they may provide for payment of such annual assessment in quarterly installments in order to accumulate sufficient funds to pay taxes, Association liability and property damage insurance, maintenance, electricity, gas and other costs as they become due. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

**Section 8. NON PAYMENT OF ASSESSMENTS; ASSOCIATION RIGHTS.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest annual rate of interest then permitted by law. The Association may bring an action at law against any owner personally obligated to pay the same for a money judgment or to foreclose the lien against the property. In such a foreclosure equitable execution against rights of use in the common elements may be sought except where the lien is because of fines due to failure to abide by rules or regulations. Failure to obtain equitable execution shall not preclude an application for a money judgment, except in instances where it is determined by arbitration or other authority that there was no proper debt due hereunder. No owner may waive or otherwise escape liability for assessments provided herein by non-use of the common area or abandonment of the lot, and execution against the rights of an owner to use the common elements or suspension of his voting rights shall not suspend or reduce liability for future assessments.

**Section 9. LIEN SUBORDINATION TO PRIOR MORTGAGES.** The lien of the assessments provided for herein shall be subordinate to the lien of any prior mortgagee. The Association lien(s) shall be junior to the rights of such mortgagee but the Association shall be entitled as a junior lien holder to participate in the proceeds of any such sale. Where there is a subsequent mortgage, the liens for special assessments shall only be extinguished upon judicial sale of the property to a bona fide purchaser for value if the court determines that the value of the lot has not been increased by improvements made pursuant thereto.

## **ARTICLE V -- ARCHITECTURAL CONTROL**

**Section 1. PURPOSE OF ARCHITECTURAL CONTROL.** A guiding purpose of architectural control is to maintain consistency of building appearance on the street side of the Association, along the bayou to conserve the view from units and access to the water, to minimize adverse impact upon privacy and to promote the safety of persons and property.

Section 2. PRIOR ASSOCIATION APPROVAL REQUIRED; SUBMISSIONS. No building, fence, wall or other structure however described or of whatever kind or nature shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made (including reconstruction) until the plans and specifications shall have been submitted to the Association and approved in writing as to harmony of external design and location in relation to the surrounding structures and topography: PROVIDED temporary measures to mitigate the damages or effects of casualty or water intrusion into buildings or units from other causes need not be submitted. However such measures shall be abated with thirty (30) days after the need for the same has passed. The Association may act by the Board of Directors of the Association, or by an Architectural Committee composed of three or more representatives appointed by the Board.

Section 3. SPEEDY APPROVAL RIGHTS. In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been presented to it, approval will not be required. In the instance of emergency reconstruction after natural disaster, action shall be taken within ten (10) days from submission.

Section 4. APPEAL FROM ARCHITECTURAL COMMITTEE. If there is an Architectural Committee, appeals from its decisions may be made by an applicant or voting owner who filed an objection with the committee either in writing or by personal appearance to the Board of Directors within thirty days (30) from written notification by hand delivery or mail of the decision. The appellant shall have the right to appear before the Board and be heard at a special meeting time fixed by them [it?], which time shall be expedited. Failure of the Board to act on the appeal within forty five (45) days from receipt by the President of the appeal notice shall be automatic approval, provided in the case of untimely appeals the time for the Board to act on the appeal shall not begin to run until it has acted upon any application made in the appeal for waiver of the time requirement for good cause shown in writing if such is included in the appeal notice itself. No oral hearing need be granted on any such application for time waiver.

Section 5. OTHER PARTIES TO PROCEEDING. Voting owners who filed a written objection with the architectural committee or board may also be present at either such proceeding and shall if they request also be heard.



#### Section 6. TIME TO ARBITRATE BOARD DECISIONS.

Decisions of the Board (including decisions in architectural appeals) must be submitted for final binding arbitration by an applicant, objecting voting owner, or other voting owner adversely affected in fact within thirty (30) days of written notification by hand delivery or mail, or when the same was earliest known or should have been known in accordance with the arbitration provisions hereto.

Section 7. UNIFORM ARCHITECTURAL STANDARDS. The Architectural Committee may adopt uniform standards, after notice to the membership and opportunity for comment, which standards shall be subject to approval by the Board. After approval, they shall be published as an appendix to the minutes of the meeting, and shall come on as a special order of business at the next membership meeting which shall be set no sooner than thirty (30) days from distribution thereof. Unless amended by a majority of a quorum at the next ensuing meeting they shall be deemed approved. A member intending to seek amendment thereof shall give fifteen days prior notice of and a copy of such proposed amendment to the President. The standards shall take effect immediately upon conclusion of such a meeting. Any amendment relating to electrically operated boat lifts or electrically operated wave runner lifts must be adopted by 2/3 of the voting members.

Section 8. VARIANCES. In instances of demonstrated hardship, special circumstances, or manifest and innocent error the Architectural Committee may allow departures or variances from its standards, either with or without agreement limiting the use to which alterations can be put. In the former case, such agreements shall be specifically enforceable by the Association by mandatory injunction in addition to the enforcement provisions otherwise provided in this declaration. The granting of such departure or variance shall not be a basis for a contention that there has been a general waiver of the standard. Such a variance shall not prevent enforcement of any substantive restriction or provision of the covenants relating to architectural control by an individual voting owner hereof within thirty (30) days of written notification by hand delivery or mail. Notice of any variance and basis for the same shall be distributed by verified mail to the membership by the party obtaining the same which notice shall advise the membership of their right to appeal within ten (10) days. Proof of such mailing shall be filed with the secretary of the board and ten days (10) thereafter the applicant may proceed unless there has been an appeal filed within that time with the Board. Any voting member may within ten (10) days from mailing file a written appeal with the Board from the granting of such a variance. The time periods and procedures specified in section 4 through 7 above shall apply to such an appeal. The Board may at its option in lieu of a

hearing refer with ten (10) days the matter to arbitration, which arbitration shall be expedited.

Section 9. STANDARDS FOR GRANTING VARIANCES. The Architectural Committee shall adopt standards for granting variances, after notice to the membership and opportunity for comment, which standards shall be subject to approval by the Board. After approval, they shall be published as an appendix to the minutes of the Directors' meeting, and shall come on as a special order of business at the next membership meeting which shall be set no sooner than thirty (30) days from distribution of the standards. Unless amended by a majority of a quorum at the next ensuing meeting they shall be deemed approved. A member intending to seek amendment thereof shall give fifteen days prior notice thereof and a copy of such proposed amendment to the president. The standards shall take effect immediately upon conclusion of such a meeting. PROVIDED HOWEVER that if the standards include any provision for granting a variance for an electrically operated boat lift or electrically operated wave runner lift, that standard shall require a 2/3 approval of the voting members.

Section 10. FORBEARANCE FROM ENFORCEMENT. Failure or forbearance by the Association in enforcing a standard, restriction or covenant relating to architectural control in an isolated instance or instances shall not be a general waiver thereof, nor shall it prevent an individual voting owner from seeking enforcement through arbitration commenced within one (1) year of the violation or thirty (30) days after such owner became aware of the violation whichever occurs first. If the remedy for the violation requires that work be undone or expense incurred that would have been avoidable had the objecting party acquired knowledge of the violation through due diligent, the arbitrator may require that the objecting owner participate in a part, or all, of the expense required to cure the violation. The Board at its option may intervene in such an arbitration to protect the interest of the Association.

Section 11. DOCKS AND MOORINGS. Inasmuch as the boat docks are on sovereignty [sovereign?] submerged land and are the subject of consent letters allowing the same at sufferance without fee, alterations therein potentially affect all owners. The electrical systems on docks pass through load centers in multi-unit buildings, and can pose both fire and shock hazards. Docks also affect view, light pollution, and water access considerations which impact the value of all units. Accordingly any reconstruction, alteration or addition to the boat docks, their electrical systems, or adjacent mooring systems are subject to architectural control.

Section 12. APPLICATION OF USE RESTRICTIONS. The provisions of this Article are subject to the requirements of Article X where applicable.

## **ARTICLE VI -- EXTERIOR MAINTENANCE**

Section 1. ENFORCEMENT OF OBLIGATION TO MAINTAIN EXTERIOR. In the event any owner of any lot shall fail to maintain the premises and the improvement situated thereon or trees located thereon in a manner satisfactory to the Board of Directors, the Association after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right through its agents and employees, to enter upon said parcel and repair, maintain, and restore the lot and the exterior of the buildings and improvements erected. The cost of such exterior maintenance shall become a debt of the owner and the Association may resort to any of its collection remedies hereunder to enforce the same. Disputes relating thereto shall be subject to final binding arbitration where demand is made within Thirty (30) days from written notification by hand or by mail of such debt and the action of the Board of Directors shall create a rebuttable presumption of necessity. A demand for arbitration shall not stay the right of entry and repair of the Association.

Section 2. SAME BUILDING OWNER RIGHT TO ENFORCE EXTERIOR MAINTENANCE. Voting owners of units in the same building may assume the initial expense of the share of one or more of other owner(s) in the same unit who after notification refuse to participate in such maintenance and/or repair: PROVIDED application is first made to the Board of Directors under section 1 above, and no action has been taken by them within thirty (30) days or if they within that time elect to remand the applicant to his remedy under this section. In such instances resolution of any dispute regarding the same shall be subject to final and binding arbitration upon demand made within thirty (30) days from commencement of such repairs/maintenance but there shall be no initial presumption of necessity or reasonableness of the amount thereof. An arbitration demand shall not stay the performance of the maintenance/repair.

## **ARTICLE VII -- GROUNDS MAINTENANCE**

The Association shall provide for the general lawn maintenance of all the lots found on the described real, and may control the landscaping thereof. The Association shall also maintain and may landscape in the way it deems appropriate all the common grounds, and the three and 1/2 acre buffer area and including, but not being limited to, the two medians found in

the dedicated road known as Regatta Drive as well as a ten (10) foot strip on both the North and South sides of Regatta Drive that is found immediately in front of the above described real property.

## **ARTICLE VIII -- REPAIRS/RESTORATION AND CASUALTY DAMAGE**

Section 1. **APPLICABLE LAW.** Each wall and roof built as a part of the original construction of the townhomes and placed on the dividing line between the lots shall constitute a party wall and roof; and to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and roofs and liability for property damages due to negligence or willful acts or omissions shall apply thereto.

Section 2. **EASEMENTS FOR ENCROACHMENTS.** Each lot owner shall have an easement over, upon and under each adjoining lot which is subject to this Declaration to accommodate encroachments from one lot upon another lot of building projections including, but not limited to, walls, stairways, and roofs, together with like easements of access to adjoining lots and structures for the purpose of repairing and maintaining such encroaching building projections provided that the lot owner exercising such easement shall restore at such owner's expense all damage to the lot subject to such easement which may be incurred in the exercise of such easement. The easement privilege granted herein for repairs shall be exercised only between 9:00 o'clock A.M. and 5:00 P.M. daily except in cases of emergency.

Section 3. **SHARING OF REPAIR AND MAINTENANCE.** The cost of reasonable repair, maintenance and/or restoration of party walls, roofs, common stairways, and exterior walls shall be equally shared by all the owners of the building who make use thereof. The cost of repair of interior party walls shall be born by the two adjacent owners. The provisions of Article VI, section 2 shall apply hereto.

Section 4. **DESTRUCTION BY CASUALTY.** If a exterior wall, party wall, roof or common stairway is destroyed or damaged by fire or other casualty, any owner within the building who makes use of the same may repair or restore it and the other owners shall contribute equally to the cost of repair, unless a different contribution rule is required by the law regarding liability for negligent or willful acts or omissions. The provisions of Article VI, Section 2. shall be applicable hereto.

Section 5. **PROTECTING DAMAGED STRUCTURES.**  
Notwithstanding any other provisions of this Article, an owner who by his

negligent or willful act causes a party wall or roof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements, and any consequential damages incident to a delay therein or a failure of the provisions made therefor.

Section 6. ALLOCATION OF CURRENT CODE APPLICATION COSTS. If the destruction is so extensive as to require retrospective application of current Building Codes to the entire building, then all owners in the building shall share equally in such increased increment of cost.

Section 7. TOTAL LOSS RESTORATION PROCEDURES. If the building is completely destroyed and the insurance of a majority of the owners requires restoration for the proceeds to be collectable the provisions of this Article shall be fully applicable to a complete restoration. In such circumstances the provisions regarding casualty insurance assignment shall also be applicable. If the insurance of all the units in the building is provided by valued policies, the decision of a majority to forgo reconstruction shall be binding, provided provisions are made for site cleanup that are acceptable to the Board of Directors. In all other cases the arbitration provisions hereof shall apply, and the affected mortgage lien holders and insurers shall be given notice thereof, and shall be entitled to participate as of right. As to such insurers and lenders the arbitration shall be non-binding but the provisions of Florida Rule of Procedure 1.820 shall apply. However, no "prior mortgagee" may be compelled to be a party to such arbitration, nor be bound by the outcome thereof without its consent. The Association has standing to join any of its owners in enforcing such confirmed award against subsequent lenders and insurers who have elected not to participate through the doctrine of collateral estoppel by judgment through representation by privies. The rights of all owners under F. S. 624.155 against their insurers shall be deemed equitably assigned to the Association for the purposes of maximizing relief obtainable to protect the interest of the Association in ensuring a properly and timely resolution of issues relating to reconstruction.

Section 8. TERMITE DAMAGE A CASUALTY LOSS. For purposes of this Article, termite damage shall be treated the same as a casualty loss.

Section 9. CONTRIBUTION OBLIGATION--CONTINUING LIABILITY. The right of any owner to contribution from any other owner under this Article shall be appurtenant to his lot and shall pass to such owner's successor in title. The obligation to make contribution hereunder shall survive foreclosure. It shall run both with the lot and remain a personal

obligation of the persons who owned the lot when the duty to contribute vested.

Section 10. **INSURANCE; REQUIREMENT; ASSIGNMENT.** Each owner shall carry fire and windstorm insurance on such unit in an amount equal to the value fixed thereupon by the Tax Assessor of Okaloosa County. To the extent that there may be no assignment of insurance casualty benefits to a third party lender, such benefits shall be deemed equitably assigned for the purpose of discharging the obligations hereunder, and the unit owner agrees to execute upon demand in timely fashion after any casualty loss such assignments as may be necessary to effectuate the intent of this Article of such casualty insurance including, in the event of shortfall, contents coverage. This assignment provision shall be enforceable by an action for specific performance, without prior arbitration and the prevailing party in any such action shall be entitled to attorneys fees. In the instance of a failure of a owner to maintain fire, windstorm, or casualty insurance as required hereby or to contribute in circumstances required by Article VIII enforcement may be had under Article XII. Flood insurance is not required.

Section 11. **TERMITE PROTECTION REQUIRED.** Each owner shall maintain current protection by a termite bond, or comparable provision for pest control to protect against termites, including subterranean and Formosan termites.

Section 12. **ARCHITECTURAL CONTROL OF CASUALTY REPAIRS.** All repairs, restoration or construction after casualty damage or loss must be approved by the Association in accordance with Article V of this Declaration, except for temporary emergency repairs necessary to mitigate additional, further or continuing damage, which temporary repairs shall not be maintained more than thirty (30) days after the need for the same expires.

Section 13. **FAILURE TO RECONSTRUCT; APPRAISAL AND PURCHASE OPTION.** In the event of any owner fails to begin restoration within twelve (12) months after casualty damage to a townhouse and/or fails to complete such restoration within eighteen (18) months after such casualty damage to restore the townhouse to the same condition as it existed prior to the damage, the Association shall have the right to purchase such lot and any improvements thereon, at the fair market value on the date notice of election to exercise such option occurs. Such right of purchase can only be exercised by the Association within three (3) years after the date of the casualty damage. In the event the Association and owner cannot agree on such fair market value within thirty (30) days after the Association makes written demand on the owner at his last know address to purchase such lot, then

each party shall within fifteen (15) days after the expiration of such thirty (30) day period notify the other in writing by certified mail, of the name of an appraiser, failing which the appraiser named within such period by one of the parties only shall conclusively determine the fair market value. In the event both appraisers are selected those appraisers shall determine the fair market value within fifteen (15) days after appointment. If the values differ but are within Five Thousand (\$5,000) dollars of each other, the higher value will be selected. If the difference is more than \$5,000.00 the two appraisers shall jointly select a third appraiser and the figure selected by a majority of the three shall be binding. The Association and the unit owner shall each pay the fee of the appraiser selected by them, and one-half of the fee of any third appraiser selected by the other two appraisers. The Association shall make good tender, in cash or its equivalent, to the owner the value determined in accordance therewith within thirty (30) days after determination. If the owner after good tender fails to convey the lot to the Association, the Association may enforce this provision by specific performance in a court of equity and the prevailing party shall recover reasonable attorney fees and costs. If the Association fails to tender the determined value within the prescribed time, or the Association fails to exercise the right of purchase within three (3) years, the lot owner shall be free to sell to anyone he chooses. The Association may by a 2/3 vote of the Board of Directors assign this purchase option to one or more of the owners in the same structure at their request. If this assignment is made after appraisal, the assignees shall reimburse the Association for all their costs and expenses associated with the appraisal process.

Section 14. SUPERMAJORITY OF OWNERS REQUIRED TO EXERCISE OPTION. The option created in Section 13 of this Article, if not assigned in accordance herewith, must be approved promptly after appraisal by a 2/3 vote of the voting owners, with the express delegation thereby to the Board of the right to make a special assessment for that purpose and if necessary to pledge the buffer area to obtain funds, which may in their [its?] discretion be made payable over more than one year.

Section 15. REQUIRED ASSOCIATION INSURANCE. The Association shall carry casualty insurance (fire, windstorm, flood and extended coverage if and to the extent obtainable) to the full insurable value of all structures found on the common areas, naming the Association as the beneficiary as its interest may appear. In the event of any casualty the proceeds not required to be paid to a mortgagee, shall be used to restore the improvements and shall not be used for any other purpose without the written consent of two-thirds (2/3) of the voting owners. The Association may also carry liability insurance if obtainable covering the Association and its officers and agents when acting within the course and scope of their

duties. Medical payments insurance may at the option of the directors be included. The cost of this insurance shall be included in the annual assessments to each lot owner.

Section 16. INSURANCE ASSIGNMENT FOR RECONSTRUCTION; PARTIES BOUND. The provisions of this Article regarding assignments, and priority of loss payee rights in casualty insurance proceeds for the purpose of reconstruction shall bind all owners, and shall also bind the holders of mortgages whose lien vests subsequent to the date of recording of this instrument.

## **ARTICLE IX -- EASEMENTS**

Each lot owner shall have his or her ownership interest subject to an easement under the slab that is found on each parcel of property for the purpose of allowing the various utilities that are installed by the Declarant and the Association, which shall include but not be limited to, telephone lines, electricity lines, water lines, cable lines and other common utilities to run under and through each slab for the mutual purpose and benefit of all lot owners. Each lot shall also have an easement over, upon and under each lot for the purpose of the existence and the maintenance of a common irrigation and sprinkler system that shall run throughout all the lots, as well as any common water line and electricity line that may be shared by all the lots. Such easements are reserved throughout the townhouse property as may be required to use, construct, maintain, repair or expand utility services needed to serve the town house project or adjacent property adequately; provided however such easements through the unit or on the lot shall be owned in accordance with the plans and specifications for each unit. There is also created a nonexclusive easement for ingress and egress over the lots containing the units as part of the common elements necessary to provide the reasonable access to the common elements by the other owners. All of the townhouse property and all of the townhouse units and the common elements and the limited common elements shall be and are singularly and collectively subject to easements for encroachments which now or hereafter exist or come into being, caused by settlement or movement of a building or other improvements upon the townhouse property, or caused by minor inaccuracies in the construction or reconstruction of a building or such improvements upon the townhouse property, which encroachments shall be permitted to remain undisturbed and such easements shall and do exist and shall continue as valid easements for the maintenance of such encroachments so long as such encroachments stand. An easement for the purposes of termite control is likewise granted to the Association, in accordance with the purposes and provisions hereof, and to the Association



for exterior maintenance, and to it or its delegates for cleanup, repair and reconstruction after casualty loss.

## **ARTICLE X -- USE RESTRICTIONS**

Section 1. **APPLICABILITY OF RESTRICTIONS;**  
**INTERPRETATION.** These restrictions shall apply to all the land in the recorded plats of Water Oaks Townhomes, Plat Book 7 page 67, Water Oaks II Townhomes, Plat Book 8, pages 19 & 20, Water Oaks III Townhomes Plat Book 8, page 86, Water Oaks IV Townhomes, Plat Book 9 page 66, all in the Public Records of Okaloosa County Florida, the common elements associated therewith, the “buffer area” (as hereinafter defined) which consists of certain property deeded by First Mutual Savings & Loan Association of Florida to Water Oaks Regatta Homeowners Association Inc. by a deed dated May 28, 1987 recorded at Official Records Book 1404 pages 1-3 but which “buffer area” has never prior hereto been annexed in accordance with Article XI, Section 3 of the original covenants, and all the docks and moorings, appertaining to lots or common elements in any of the foregoing. With the exception of restrictions upon uses made within individual townhomes, the interpretations of the terms used herein shall be as broad and expansive as may be consistent with common understanding of such terms, it being the intent that everything is prohibited except what is duly approved through established procedures except that the things enumerated in section 7 hereof shall be absolutely prohibited without a power to grant approval or exception.

Section 2. **PARKING AND STORAGE.** No commercial vehicle, commercial autos, mopeds, motorcycles, construction vehicles or equipment, or mobile or stationary trailers, campers or boats, or inoperative vehicles, or recreational vehicles, self-propelled or otherwise, shall remain parked on any lot within this subdivision unless in a unit’s garage. A reasonable number of private autos, motorcycles, or like vehicles owned by owners may be parked in the private driveway associated with a unit and also be parked in the paved parking areas across the street from the units, provided the number is not excessive under rules established by the Board and ratified by the membership through the procedures specified in Section 26 hereof.

Campers, trailers, recreational vehicles, boats or any other objects shall be parked only in areas designated for such parking, and not in driveways. This section shall not be construed to prohibit the occasional and temporary parking of non-passenger vehicles, recreation vehicles, boats or equipment in driveways so as long as such vehicles vessels or equipment are intended to remain on that lot for short periods of time and on the condition that such parking is upon isolated, non-consecutive occasions, not to exceed 4 days on any single occasion, and for the conduct of routine maintenance.

Trailers shall not be parked in driveways as a means of storage, or to support work or construction efforts for more than 4 consecutive days. Special exceptions to the limitation on trailers may be granted by the board of directors upon application made, where extensive repair or reconstruction is required of a building or a unit, and contractors or subcontractors reasonably require such access. Consideration of such request shall be accelerated, and may be accomplished by telephone polling of the directors. All such vehicles which are subject to the requirement for tags, state or Federal licenses or decals shall be maintained currently so that the ownership may be determined and only equipment, vehicles, or boats registered, titled, or otherwise legally vested in the name of owners or renters may be stored. No extended vehicle maintenance, repair or rehabilitation will be permitted in any such area. Nothing herein shall limit the right of the directors to refuse permission outright to an owner to use the vehicular storage area if the vehicle or boat is excessively large, or the owner is seeking a disproportionate amount of the storage space available, as that term may be defined from time to time in rules adopted by the board of directors with the advice of the R.V. committee and ratified by the membership in accordance with Section 26 hereof, or constitutes a danger or a nuisance in law or as declared by such rules.

In every instance the doctrine of gratuitous bailment which imposes liability upon the association only in instances of gross negligence shall apply, it being the intent hereof to restrict liability of the association for losses to or from such storage areas. Owners or renters who accept the privilege of storing their property in this area also accept thereby an obligation to indemnify other owners of property stored there for any damages caused to them by the property which such owner stores in this location which shall be based upon principals of strict liability. The owner of such property shall include the Association as an additional insured on such liability insurance they may have upon such chattels.

Section 3. **REQUIRED CONFORMITY OF STRUCTURES.** Unless approved for construction by the board of directors or its delegate committee, no structure shall be erected, placed or altered on any

(a) Lot which is not in conformity with and in harmony with the external design of existing structures, and in accordance with the original plans and specifications; or

(b) Any dock or mooring which is not in conformity with and in harmony with the design of existing docks and a simple dock environment.

Section 4. **EXTERIOR OF TOWNHOUSES.** The exterior of any townhouse shall not be changed structurally, nor shall any attachment be made to such exterior without the approval of the architectural committee or

board of directors nor shall the existing color design nor [sic] shade be changed except that the architectural committee shall have jurisdiction through rules ratified by the membership in accordance with Section 26 hereof to change the colors in a fashion that is uniform throughout the entire development. The intent hereof is that the colors and shades shall remain uniform throughout in all buildings on the premises.

#### Section 5. TV DISHES /DATA TRANSMISSION DISHES

(a) SAFETY PREAMBLE. This section is for the legitimate and clearly defined purposes of ensuring that shock hazards are eliminated, and danger of impact damage to persons, roofing tiles or other property from falling or windblown objects in hurricanes mitigated, and the health, physical injury and property damage hazards from water intrusion into building attics from improper installations are avoided. It is the agreement of all parties that this area of Florida has been noted for the frequency of lightning strikes, Hurricane, Flood and windstorm risks.

(b) APPROVAL. No installation of any antenna, T.V. Dish in excess of one meter in diameter (or such lesser diameter as may hereinafter be provided by Title 47 Code of Federal Regulations section 1.4000), data transmission dish, or other attachment to receive electronic transmissions to any of the roofs or other portions of the structures, any dock, deck, lot, common area, or the buffer area, will be made unless and in every instance until the prior consent of the board of directors is obtained as to the placement, location, and orientation thereof. Initial submission shall be made to the Architectural Committee, and they shall promptly make their recommendations to the board. The application for such shall not only include a sketch showing the size and location, but also shall include details as to how the power and signal cables shall be routed, details on faring installation and other provisions made to exclude water intrusion into the building, and where applicable power wiring schematics including provisions to prevent fire damage to the structures from potential lightning strikes.

(c) APPEAL. An appeal from the ruling of the board of directors shall be prosecuted directly to the United States District Court for the Northern District of Florida, Pensacola Division as an original declaratory judgment action under Title 28 USCA Section 1331, rather than to the Federal Communications Commission. The prevailing party shall be entitled to costs and attorneys fees in the appeal, but not in the initial application to the board of directors.

Section 6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become a nuisance to the neighborhood.

Section 7. STRUCTURES PROHIBITED WITHOUT EXCEPTION. No structure of a temporary or permanent character, such as a tent, shack, barn, tree house, or storage shed shall be used, constructed or maintained on any lot or dock at any time. The listing of structures or things prohibited in this section shall not be exclusive, or all inclusive, of other such items within that generic class, it being the intent to prohibit all such facilities on or upon exterior to the units or their lots or docks.

Section 8. SIGNS AND FLAGS. No signs of any kind shall be displayed at any time to the public view on any lot except one sign of not more than five square foot in area advertising the property for sale or rent. Nothing herein shall preclude the proper display of United States flags by lot owners or the Association. However the flag must be displayed in a respectful way, subject to reasonable standards for size, placement and safety and consistent with title 36, U.S.C. Chapter 10, and any local ordinances.

Section 9. TRASH RUBBISH AND WASTE. No lot shall be used or maintained as a dumping ground for rubbish, trash, inoperable vehicles or other waste. All garbage shall be kept in sanitary containers as prescribed by the Board of Directors, the City of Niceville or their delegate, and shall be concealed from street or public view except for a period beginning the night before the day of pickup and concluding the evening thereof.

Section 10. PETS. No person shall have, keep or maintain on any lot as defined herein any fowl or animal domestic or otherwise except domestic house pets and no more than two cats or two dogs (or one of each) may be maintained on any one lot at any time. Such animals shall not be permitted to trespass another lot without the consent of the lot owner. They may be exercised upon the common area, or the buffer areas under the control and close supervision of the owner or renter. No animal shall be permitted to run free in the neighborhood. When such animals are walked all fecal material shall be policed up by the owner, or his agent as it is deposited. Damage by animals to grass on lots or common areas or shrubs shall be repaired at the expense of the owner of the unit where the animal is located. Unless appealed to the sanctions committee, fines for violation hereof by him or his licensee or of the rules thereunto appertaining adopted by the board upon advice of the yard and grounds committee and ratified by the membership as per Section 26 hereof shall be billed to the owner(s) of the lot where the animal is usually kept.

Section 11. HURRICANE AND STORM SHUTTERS.

(a) **POLICY AND INTERPRETATION OF RULES.** In recognition of the individual and collective benefits of property protection during an emergency, owners are encouraged to take all reasonable precautions to protect their units and grounds in the face of severe weather or other imminent danger. There is nothing in the policy of this section that is intended to discourage or prohibit the installation or use of permanent or temporary storm shutters/panels or the implementation of other reasonable protective measures.

(b) **INSTALLATIONS THAT ARE A CHANGE TO BUILDING.** Permanent installation of shutters/panels, shutter/panel hardware or other permanent protective device is considered a modification of the building structure subject to architectural committee review and action prior to installation.

(c) **WHEN SHUTTERS MAY BE USED.** Commercially installed or homeowner prepared shutters/panels may be put up when a tropical severe weather watch, warning or similar advisory is declared for the area by the national weather service and/or local emergency management officials. Shutters/panels are to be taken down within seven (7) days after the event occurs or the watch/warning is lifted, or seven days after access to the area is allowed, whichever is later. Although the practice is not encouraged, commercially installed transparent/plastic/lexan shutters may be left in place for longer periods of time, as needed by the owner.

(d) **TEMPORARY VARIANCES.** The chairman/co-chairmen of the architectural committee, his/her designee or any other member of the architectural committee, has the authority without a committee meeting to grant temporary variances to the requirements of section (c) hereof on an as needed basis. Such temporary variance can be arranged in writing or by telephone. If, after a good faith effort, the owner is unable to remove the shutter panels in a timely fashion, such a variance is warranted. The variance however, is a temporary expedient, and not intended as a continuing approval for departure from these guidelines or as a substitute for a formal approval, or other resolution through legal processes.

**Section 12. COMMERCIAL ACTIVITIES.** All lots are for single family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, lodging house, rooming house, hospital, sanatorium, professional office within a townhome where the public is expected to come, or other professional or office type structure facility or provision shall be placed, permitted or maintained at any time on the premises or any lot, or part thereof, nor upon any dock or mooring.

**Section 13. TREES, LANDSCAPING AND GARDENS.**

(a) **EXISTING TREES AND NATIVE GROWTH.** It is the intent of these restrictive covenants that the trees and other native permanent growth now on the property including the lots thereof, common area, or buffer area shall not be removed unless same become diseased, are a evident danger to the any structure and/or other good cause all as determined in their sole discretion by the board of directors.

(b) **NEW PLANTING.** All new plantings such as shrubs, hedges etc. on any lot, the common areas, or buffer area must be previously approved by the yards and grounds committee to ensure they will not obstruct neighbors view, or access to the association or its yards and grounds contractors, maintenance, drainage, or affect the irrigation systems. New plantings of trees on a lot which will not endanger a building or its associated structures may be made **ONLY** with prior consent of yards and grounds and are subject to the provisions of subsection (c). New plantings between buildings which hinder ingress for purposes of repairing damage to or perform maintenance upon structures, lots or docks will not be approved. Vegetable gardens are prohibited as well as are all illegal, noxious or obnoxious odor producing vegetation. Vegetation used for erosion control will not be removed from any lot. There shall be no planting in the common areas except with the consent of the association.

(c) **AUTHORITY OF ASSOCIATION TO CONTROL LANDSCAPING.** The Association shall have control of landscaping upon each lot, and the yards and grounds committee, or its delegates, have the right to prune, cut, transplant, or remove any unauthorized planting, or any newly planted tree or vegetation upon any lot which adversely affect the considerations set forth in subsection (b) above after reasonable prior notice to the owner thereof, except that no prior notice shall be required for routine maintenance of now existing landscaping.

**Comment: The version of section 13 in the amendment as recorded does not use the standard subsection form or have subsection titles. Consistent form and subsection headings are added here.**

Section 14. **FUEL TANKS.** No fuel tanks of any kind shall be erected, buried, placed or permitted on any part of such premises, except small gas tanks for operation of a barbecue grill, fuel for equipment, motors or vehicles, which shall be stored in such a way as to constitute no danger to an occupied building in the event of a leak.

Section 15. **CLOTHES LINES.** Clothes lines are prohibited.

Section 16. **FENCES.** No fences shall be allowed in either the front yard or the back yard of any lot, except for Lot #1, Water Oaks Townhomes, which shall contain a fence to protect the swimming pool on that lot that will

be maintained in a form approved by the Association. No fences shall be erected on the lot lines between end units.

Section 17. MAIL BOXES. No letter and other delivery boxes, other than what has been provided by the United States Postal Service, will be allowed on any lots or on the common areas.

Section 18. RESUBDIVIDING. No lot shall be resubdivided.

Section 19. DOCKS; WALKWAYS; MOORING FACILITIES.

(a) DOCKS; LOCATION; USE; EXCULPATORY COVENANTS. Boat docks will be maintained straddling joint property lines for the use and benefit of the adjoining townhouse units, and each of the two townhomes shall have an easement for reasonable use, and of ingress and egress over the same. Such docks shall be only for the jointly assigned units and are not common areas of other units. Access to each dock shall be ONLY through the lots whose property line the dock straddle (except for the mutual walkway) and such access shall be under the control of the lot owners whose property lines the dock straddles. There shall be no tort liability on the part of the Association for injuries to person or property incident to the use of the dock or mooring facilities, or the water or electric service thereto, or for ship to shore collisions. Each owner's use of riparian rights of access to the water for recreational purposes shall not be infringed upon except as provided for the dock and its associated moorings. The right to moor a vessel or vessels shall not be abused so as to deprive the adjacent unit owners of an equal amount of area to moor vessels of equal beam, or number. The docks and mooring areas are to be considered an extension of joint property to maximum amount authorized by the association in each instance, or to the open channel in the case of offshore anchorages or moorings. All rights under any authorized consents given by the association or otherwise shall pass automatically with the title to each lot. However, without limiting the automatic effect of this section, future conveyances shall include expressly therein the conveyance of the fractional assignment of that owner's interest in these intangible non-appurtenant amenities.

(b) UPKEEP; REPLACEMENT; ENFORCEMENT. Upkeep or replacement of the boat docks constructed on the property line between the units shall be the joint responsibility of each of the joint units, and in the event of a failure by one owner to repair or maintain the same the other may do so and seek assessment by the Board of Directors of one half the costs thereof. If voted by a majority of the Board, the same shall be billed to the unit that has refused to participate and may be collected as other obligations to the association provided herein. This section shall not impose tort liability on either owners or the Association.

(c) WATER AND ELECTRICITY. Water and electrical service provided by each owner on the Boat Docks constructed on the line between units shall be the responsibility of each of the respective owners except in the case of water provided to buildings 1 through 6 under subsection (d) below.

**Comment: Cross reference to subsection (d) was in the recorded version; correct cross reference should be to subsection (e).**

(d) MUTUAL WALKWAY; UPKEEP; EXCULPATORY COVENANTS. Upkeep, maintenance and repair of the boat docks constructed for joint use in connection with the Mutual Walkway and mooring facilities shall be the obligation of the owners making use thereof. The Association shall establish the rules and regulations concerning the use of such Mutual Walkway. There shall be no tort obligation imposed upon the association for any injury to persons or property thereupon.

(e) WATER SERVICE TO DOCKS SERVICING BUILDINGS ONE THROUGH SIX; ASSOCIATION EXPENSES; EXCULPATORY COVENANT. Water service provided to the docks servicing units one through six shall be maintained in the same condition as it existed on the date of the initial declaration, and shall be paid by the Townhouse Association, Provided that in the event of excessive charges due to an unreported leak the board of directors may by a majority vote bill the lots benefited by this clause to bear a fair allocation thereof. If changes in the services thereto are made which result in increased water usage the association shall not be responsible for the increase, and the Association shall have a right to require prior approval before any such changes are made.

(f) LIMITATIONS ON USES OF MOORINGS. The mooring facilities from each dock, wherever situated, shall be used for the mooring of recreational vessels. They shall not be used by commercial boats, nor shall they be leased to any non-owner, nor shall non-owners be allowed to moor their boats even without payment, except a (sic) owner may as an accommodation and without compensation allow a non-owner to moor his boat for a period not to exceed thirty (30) consecutive days unless said owner has an ownership interest in the vessel that is at least equal to the largest of the other fractional shares therein. Owners shall not use moored vessels for permanent living quarters, as a substitute for a dock house, or for permanent storage. The Association may by rules of its Director ratified by the membership as per section 26 hereafter regulate the moorings to include requirements for protection of the vessels secured thereat in the event of storm.

(g) ASSOCIATION TORT IMMUNITY REGARDING DOCKS, MOORINGS AND VESSELS. There shall be no tort liability on



the part of the Association for injury to persons or property damage because of or occurring on the docks or moorings, or vessels moored at the docks, where ever situated. Without limitation this immunity includes damage from electrical and water systems, or to any such dock or licensees or guests.

Section 20. WATER FRONT VEGETATION. For erosion and pollution control to maintain the integrity of the waterfront vegetation any changes therein other than routine maintenance shall be subject to control by the yards and grounds committee under the same procedures that have been established hereunder for architectural control regarding notice, hearing and appeal. The Association shall have no duty of maintenance in relation thereto.

Section 21. RULES FOR USE; SWIMMING POOL, RECREATIONAL SHELTER, TENNIS COURT; BUFFER AREA, INSURANCE. The Directors may make and enforce rules relating to the use of the Swimming Pool and adjacent Recreational Shelter, tennis courts, common area and buffer area owned by the Association, which rules shall be submitted to the membership for ratification as per section 26 hereafter. Such rules shall be to ensure the common enjoyment thereof, to prevent abuses, and for the protection of the Association from Tort liability. They shall in the interest of general safety restrict use to owners, their families, renters, or guests. All owners who make use of such facilities, or whose renters or other licensees make such use shall maintain, as a part of their homeowners or renters coverage, personal liability coverage which will include the Association as an additional insured thereunder.

Section 22. REQUIRED APPROVAL; PATIOS, DOCKS, ADDITIONS. No structural alterations, erection or expansion of patios, decks or docks wherever situated, or additions/changes to the exterior of the basic structure of the units including the garages shall be made except by prior approval of the plans and specifications in writing by the Homeowners Association in accordance with the provisions for architectural control. Each unit owner or renter shall keep their portion of the building, patio, and lot neat and attractive, and perform such maintenance, both interior and exterior, as is reasonably necessary to protect the value of neighboring property.

Section 23. VIOLATIONS; TITLE UNAFFECTED. No violation of any covenant or restriction hereof shall work a reverter or forfeiture of the title to any lot.

Section 24. BOAT HOUSES, BOAT LIFTS AND PERSONAL WATER CRAFT LIFTS.

(a) **PURPOSE AND INTENT.** It is the purpose hereof to provide the framework for the Association to manage the installation of boat lifts under this section and rules promulgated by the Directors and ratified by the membership as per Section 26 hereof that reasonably protect the interest of owners in water view, safety, and a simple dock environment. This section and those rules should be interpreted in light of that intent and applied accordingly.

(b) **GENERAL RULE.** Boat houses of whatever type and in whatever form and whether free standing or associated with a boat lift are prohibited without exception. Except as otherwise provided in this section, boat lifts and personal water craft lifts are prohibited.

(c) **LOW-PROFILE BOAT LIFTS FOR POWER BOATS.** An Owner must apply to the association on its form and obtain its prior written consent to install a low profile boat lift for a power boat with respect to the dock and slip associated with such owner's unit. Upon submission of a boat lift installation application to, and approval and issuance of an Association Consent by the Board of Directors upon the advice of the Docks Committee composed of three or more members appointed by the board, installation may commence. Such proposed boat lift installation shall comply with specific limitations that:

(1) Such lifts shall conform to the design concept of low profile boat lifts without sides or a roof and shall not extend seaward beyond the end of the dock without the consent of the adjacent owner.

(2) Lift pilings shall be separate from pilings supporting the common dock.

(3) Neither the lift nor its support pilings shall encroach upon the dock area of the common dock accessing the lift.

(4) The piling supporting the lift or any part of the lift mechanism shall not exceed forty-two (42) inches above the floor of the associated common dock. Said dock floor shall be maintained at the same level as those of other docks in the development.

(5) The lifting cross beam shall not be raised higher than the floor of the common dock, except temporarily for maintenance on the boat or lift. If the vessel has a Flying Bridge the Directors may as a matter of administrative enforcement upon application duly made require the cross beam to be raised to a lesser extent except during inclement weather.

(6) Such lift shall not be rated at more than 12,500 pound lifting capacity; and

(7) Such installation shall comply with all applicable electrical codes with appropriate inspections and other safety requirements reasonably required by rules adopted as described in subsection (a) of this section.

(d) PERSONAL WATERCRAFT, DAVIT LIFTS, SAILBOATS UNPOWERED VESSELS, AND FINGER DOCKS.

Personal watercraft lifts shall be installed on a piling separate from pilings supporting the common dock and shall not rotate over the common dock. Finger docks and manually operated davits restricted to less than 500 pounds shall be considered separately. Lifts for sailboats and unpowered vessels, and powered vessels with flying bridges will be considered separately under the lift specifications in subsection (c) of this section with due concern for the special view obstruction problems presented by such boats. All such lifts shall meet related Safety and electrical service requirements reasonably required by applicable rules.

(e) FORM OF APPLICATION AND CONSENT. There shall be a boat lift application and consent form contained in a single recordable instrument which shall be in a form prescribed by the Board of Directors. The original of this form shall be notarized and witnessed by all parties in a form recordable in the public records of Okaloosa County, and shall when granted in each instance shall be recorded by the association at the applicant's expense.

(f) ADMINISTRATIVE ENFORCEMENT. Any owner may seek administrative enforcement of the provisions of this section pursuant to procedures adopted by the Board of Directors that shall include initial review and recommendations by the Docks Committee, followed by review and, in appropriate cases, action by the board of directors. Nothing herein shall abridge a member's right to access to court to enforce this section or rules adopted thereunder either as an initial recourse or subsequent to the administrative enforcement process.

(g) CHOICE OF LAWS. Florida Law rather than Admiralty Law or Federal statutes limiting damages shall govern liability and damages in claims between members, or a member and the Association and the application shall contain a prominently displayed provision to such effect in capitalized text immediately above the line for applicant's signature.

(h) AFTER THE FACT APPLICATIONS. Because of lift safety and property damage considerations after the fact applications may not be entertained unless the prior installation is first completely removed.

Section 25. **RESTRICTIONS--REIMPOSITIONS; EFFECT; PRIOR USES.**

(a) REIMPOSITION OF RESTRICTIONS. Article X, as amended hereby, and these restrictions are reimposed as of the date of the adoption hereof, and shall notwithstanding any provisions in conflict herewith elsewhere in the covenants remain in force and effect until January 1, 2049 unless expressly amended prior to January 1, 2049. Thereafter such article and the restrictions contained therein shall be automatically extended for successive additional ten (10) year periods.

(b) EFFECT OF FAILURE TO ENFORCE. These restrictions are reimposed notwithstanding any prior failure to enforce the same. Neither such failure nor prior variance granted under Article X Section 10 of the original covenants shall be grounds for any contention that any restriction imposed or reimposed hereby is not for that reason fully enforceable. All such variances previously granted or allowed under said section shall be mere prior non-conforming uses which are protected under the terms and conditions thereof as such but not grounds for any attack upon these restrictions.

**Comment: The recorded version did not conform to standard drafting forms or provide subsection titled. This version makes those technical changes.**

Section 26. ADOPTION OF RULES. Rules may be adopted by a majority of the board, and shall be published and distributed with the minutes of the meeting wherein they are adopted, and shall become effective in thirty (30) days unless twenty five (25) percent of the membership shall object in which event they shall not become effective unless ratified at the next annual meeting. At each annual meeting rules which have been adopted in the prior year and which have not been objected to shall also be submitted for membership ratification. They may be amended by the membership at that time or any subsequent time by a majority of a quorum at an annual meeting.

Section 27. BUFFER AREA. The approximately 3.58 acres of vacant land described in that certain conveyance recorded in Official Records Book 1404 Page 1, Public Records of Okaloosa County the legal description of which is page 1 of composite exhibit A hereto, is referred to above as the "buffer area". It is hereby constituted as a limited form of "common area" in which the individual lot owners do not have a legal or equitable ownership but only such rights of use as may not be reached under a planned unit development rider. The provisions of Article XI, Section 5 of the original Declaration shall not be applicable to the buffer area. It may not be developed and shall remain vacant land, except that portions of it may be used for "related common area improvements" which may only include landscaping, a fenced area to store boats and vehicles, an access road to such area, tennis court, drainage and erosion control provisions, irrigation wells and systems and/or water transmission lines or other recreational uses which do not impair its nature as a buffer area or constitute a nuisance.

Section 28. ASSOCIATION STANDING. The Association has judicial standing to enforce restrictions and when seeking a preliminary

injunction shall be aided by a presumption of irreparable injury and high probability of recovery.

## **ARTICLE XI -- SANCTIONS AND ENFORCEMENT**

**Note: Article XI is the last Article in the current 1984 covenants. This amendment substitutes new Articles XI thru XIV for the old Article XI. Accordingly, the various provisions in the old Article XI are reflected throughout these four new articles at appropriate places.**

Section 1. USE OF COMMON, BUFFER AND VEHICLE STORAGE AREAS; GROUNDS FOR SUSPENSION; FINES. Suspension of the right to vote, and to use common areas, and imposition of fines may be had for:

- (a) Failure to pay annual assessments or any quarterly billing thereof.
- (b) Failure to pay any special assessment, casualty assessment, or other assessment.
- (c) Failure of the Owner(s) or their licensees to comply with published rules relating to the use of common elements, the buffer area, docks, moorings, swimming pool or its associated pavilion and equipment, tennis court, parking areas or vehicle storage areas after notice to comply.
- (d) Violation of the restrictions imposed by these covenants.
- (e) Violation of decisions of the Architectural Committee or the Board of Directors on Architectural matters.
- (f) Willful damage to landscaping or trees wherever situated.

### Section 2. PROCEDURES.

(a) MAJORITY VOTE OF BOARD. The Board shall meet and if sanctions are voted by a majority of the Directors shall refer the matter to the sanctions committee.

(a) HEARING REQUIRED; ANNUAL ASSESSMENT EXEMPTED. In the case of sanctions under section 1, Subsections (b) through (f) of this Article there shall be a hearing before a sanctions committee. No hearing is required for nonpayment of any installment of the Annual Assessment or any portion thereof if the same, has remained unpaid for over ninety (90) days after billing.

(c) NOTICE REQUIRED. Not less than fourteen (14) days notice of the hearing is required. The notice shall specify the issues for the hearing with reasonable particularity, and the sanctions voted by the board.

(d) SANCTION COMMITTEE. Hearings shall be before a committee of at least three voting owners appointed by the board of directors

who are not officers, directors or compensated employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or compensated employee, or a person who has filed a current complaint with the board on the same violation at issue. If the committee by majority vote does not approve a proposed fine or suspension it may not be imposed. The Sanctions Committee may in its judgment in specific and limited cases, and not as a general course or under general retainer, arrange for legal advice. In such cases the sanctions attorney shall not be the attorney who represented the board of the Association. The Association shall be liable on such arrangement which shall be filed with the secretary who shall endorse the Association's undertaking to pay the same upon its terms, and deliver a true copy to the contracting attorney.

(e) **COST OF REPRESENTATION.** The cost of such representation shall be an association expense in excess of the annual assessment voted by the board under Article IV Section 3, as shall be any expense necessary to fend any action brought against the association or its board members. The latter shall be authorized by a majority of the board. Both shall be automatically added to the quarterly assessment, but shall be shown as a separate line item thereon.

(f) **APPEAL.** Any suspension of the right to vote or use areas identified in Article XI, Section 1, except one grounded upon failure to pay an installment of the annual assessments, can be submitted to arbitration by the party against whom the sanction is sought. The arbitration demand shall in such cases be filed with the board within thirty (30) days from the date on which notice of the action of the sanctions committee is given by delivery or mail.

### Section 3. **MAXIMUM SANCTIONS: CONTINUING OFFENSES.**

(a) **FINES.** Fines shall not exceed \$100.00 a violation but may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. Fines may not exceed one thousand (\$1,000) dollars, provided in the case of a continuing violation where after one year there has been no payment of an initial fine, further fines may be imposed. In each such case a new sanctions hearing shall then be required.

(b) **USE OF SUSPENSIONS.** No suspension of use of the areas described in Article XI, Section 1 above, shall exceed sixty (60) days except in cases where the owner has failed to place Water Oaks Regatta Homeowners Association on the owner's homeowners liability coverage as an additional insured in which cases (sic) the suspension may continue until there is compliance. A suspended owner will continue to have the right to vehicular and pedestrian ingress and egress to and from the parcel, or the right to park in conformance with the generally applicable limitations of the covenants, restrictions and rules.

(c) VOTING. No suspension of the right to vote shall continue past the time the party pays the sums due, or makes mutually agreeable arrangements for payment, or in the case of a non-monetary offense complies with the condition set by the board for automatic reinstatement which in such cases must be included in any such notice of suspension of voting rights.

## ARTICLE XII--DISPUTE RESOLUTION

[Section 12. If any owner or occupant of any “lot” as defined herein shall violate or attempt to violate any of these covenants or restrictions while in force and effect, it shall be lawful for the Association or any other person or persons owning any other lot which is then subject to this Declaration, to prosecute any proceeding in law or equity against any persons violating or attempting to violate such covenants and restrictions and either to enjoin them from doing so or to recover damages or dues for such violations.]

**Note: This came from Article X, section 12 of the original covenants. It has been deleted there. Make sure it is adequately covered, probably here.**

Section 1. FINAL, BINDING ARBITRATION COVENANT. Any dispute regarding violation of these covenants or restrictions, or for the resolution of any disputes arising hereunder, or under the provisions of chapter 720, Florida Statutes, or because of tort liability of any kind, whether sounding in premises liability, transactional tort or otherwise, or in contact in any way between the Association and member(s) or between members shall be subject to final, binding arbitration under the arbitration section hereof except where State or Federal law or regulation require recourse to a judicial or administrative forum, or these covenants expressly provide above that arbitration need not be had. Lessees of units, licensees, invitees, and guests seeking to impose tort liability shall as a condition precedent to suit hereunder be required to submit to arbitration under Florida Rule of Civil Procedure Rule 1.820.(2)(?)

### Section 2. ARBITRATION PROCEDURES.

(a) STATUTORY BASIS. Under authority hereof and pursuant to applicable statutes, except for lien enforcement, (including equitable execution thereunder), arbitration rather than litigation shall be the method of enforcement under this declaration, except where otherwise provided above. No mention of appellate review where trial de novo under rule 1.820 is demanded, nor mention in the costs sections, or any other

section hereof, shall be construed as implying a right to appellate review on the part of any party bound to final arbitration hereunder.

(b) PARTIES; PROCEDURES. The Association, or any owner has the right to arbitration under the provisions and procedures established by Chapter 682, Florida Statutes of any issue of fact or issue of law under this Declaration or in any way related thereto which is subject to arbitration under section 1 of this Article.

(c) CONDITION PRECEDENT TO SUIT; FRCP RULE 1.820 ARBITRATION; AWARD ADMISSIBLE IN EVIDENCE. If a party contends for any reason that it is not required to submit to final bind arbitration, then it shall be a condition precedent to suit hereunder, or to any suit involving the terms of Chapter 720 Florida Statutes, that the matter be first submitted to arbitration under Rule 1.820 of the Florida Rules of Civil Procedure. After award, if there is a demand within the time specified by said rule for trial De Novo the award shall be admissible in evidence at any subsequent judicial proceeding. If there are other parties who are bound to arbitration on the same or related issues, they may also be joined in a single arbitration. The award shall be final as to them and the demand for a Trial De Novo by any party entitled to do so shall not delay confirmation as to those bound to final arbitration.

(d) NUMBER OF ARBITRATORS. There shall be one (1) mutually agreed independent arbitrator (unless the parties mutually agree on three arbitrators) who shall not be a member of the Association. However, if the parties are unable to agree on a single arbitrator and desire three party arbitration then each may pick one arbitrator, and the two arbitrators shall then pick a neutral non member (sic) as the third arbitrator who is listed with the clerk of the first judicial circuit as an approved arbitrator or otherwise is by statute qualified to act as such. If a mutually agreeable arbitrator cannot be agreed upon, or the parties have agreed upon an arbitration before three parties (sic) but the two arbitrators cannot agree upon a neutral arbitrator, then a County Judge of Okaloosa County, situs provision "B" may upon the filing of a motion to enforce this covenant, select the same.

(e) Nothing in these covenants shall prevent arbitration awards in excess of one thousand dollars (\$1,000.00) except where the arbitration is an appeal from a fine.

Section 3. ARBITRATION EXPENSE ALLOCATION. The expenses of arbitration shall be divided equally, and no attorneys fees shall be recoverable except in accordance with section 4 hereof.

Section 4. AWARD CONFIRMATION: ATTORNEY FEES; CONSEQUENTIAL DAMAGES; REQUIREMENT FOR INSUROR GOOD FAITH AS IN F.S. 624, 155 AND F.S. 626.9541(i).



(a) **ATTORNEY FESS AND COSTS WHERE THERE IS NO COMPLIANCE.** If the arbitration award has not been complied with within the time provided in subsection (c) (sic) of this section the prevailing party may seek judicial enforcement of the award under Chapter 682, Florida Statutes, together with all damages from such violation, costs and attorneys fees for any such enforcement proceeding.

(b) **TIME FOR VOLUNTARY COMPLIANCE.** In the event of voluntary compliance before the prevailing party seeks confirmation of the award under F. S. 682.12, at the time contemplated by F. S. 682.14, no arbitration attorneys fees shall be recoverable.

(c) **EFFECT OF DE NOVO TRIAL DEMAND.** If a party entitled to demand trial de novo from an arbitration award does so, and fails to prevail at trial then arbitration attorneys fees, costs, and interest at the maximum amount specified in section 5 hereof, including interest on the attorneys fees found to be due, shall be deemed to have begun to run from the date of the award until the date of final resolution before whatever forum and whatever means.

(d) **POST ARBITRATION FEES AND COSTS.** Interest at the highest rate, attorneys fees, and costs for all post arbitration proceedings, including confirmations, new trials, and if allowed by the district court for certiorari or other proceedings of whatever kind under the Florida Appellate Rules, shall also be recoverable by the prevailing party.

(e) **CONSEQUENTIAL DAMAGES; REQUIREMENT FOR INSUROR GOOD FAITH.** If there is a demand for a trial de novo, or any appellate proceeding is sought after trial de novo, and the association is the prevailing party, should there be consequential damages from delay to it, or to any member of the association, sustained subsequent to the date of the award, the Association may for itself and for the use and benefit of its member or members recover their consequential damages as a part of its other losses recoverable hereunder by a prevailing party in such circumstances, unless the court having jurisdiction determines that the claim or defense was initially presented as a good faith argument for the extension or modification, of existing law with a reasonable expectation of success, or the losing party or the losing party's attorney had reasonable basis for believing that the claim or defense was supported by the material facts necessary to establish the same, or was supported by the application of then-existing law to those material facts, **PROVIDED** that if it also appears that the demand for trial de novo or appellate proceeding was primarily undertaken for the purpose of unreasonable delay, such damages shall nonetheless be recoverable against the losing party. Such damages shall also be recoverable against a casualty or liability insurer who participates in arbitration hereunder where it has a right to demand trial de novo, if under all the circumstances it should have accepted the outcome of the arbitration had it acted fairly and honestly toward any insured including without

limitation both the association and the affected member. It is also the intent of this section that damages, including consequential damages, may be recovered hereunder by a prevailing party against any arbitrating insurer for any violation of F.S. 626.0541(i) committed in the course of the arbitration, confirmation proceedings, or trial de novo without regard to whether the same were part of a general business practice. Filing of a Section 624.155 Florida Statutes civil remedies notice with the insurance commission need not be made at any time in connection herewith.

Section 5. AWARDS; INTEREST. Interest shall run at the maximum amount allowed by the statutes of the state of Florida from the date of the award until paid in full.

Section 6. AWARDS; INSTALLMENT PAYMENT; REDUCTION. If a party applies to the directors for installment payments of any award in favor of the association the board may inquire about the earnings and financial status of the party and has discretionary power by majority vote to allow payment in installments in such a fashion to ensure a periodic reduction of the award until it is satisfied. The directors may by unanimous vote waive the payment of interest, or reduce the rate thereof, reduce the amount thereof, forgive the entire award, or otherwise modify the award.

Section 7. RIGHT OF COUNSEL; PROCEDURE; TAXATION OF DELAY SANCTIONS.

(a) PROCEEDINGS WHERE ATTORNEYS MAY APPEAR. Any party may have counsel present at the appeal to the board from a decision by the Architectural Committee, at a sanctions hearing, or at any arbitration herein. All aggrieved parties shall be heard in person or through counsel at the proceedings enumerated above. There shall be no discovery (in the sense that word is used in the Florida Rules of Civil Procedure) in any arbitration unless all the parties thereto shall agree in writing to allow such.

(b) PRIOR NOTICE OF APPEARANCE. The proposed counsel shall file an appearance for such party with the association president specifying the party for whom he will appear and in general terms the issues to be asserted at least seven (7) days prior to such proceeding.

Section 8. HEARING PROCEDURES. The board president, or arbitrator, lead arbitrator or committee chairman shall preside, and the procedure shall be informal and free of technicality.

Section 9. LITIGATION ATTORNEYS FEES TO PREVAILING PARTY. In the event of litigation not covered by arbitration hereunder to enforce the terms of this Declaration, the prevailing party shall be entitled to

recover reasonable attorneys fees and court costs from the unsuccessful party to such litigation.

### **ARTICLE XIII--AUTOMATIC EXTENSION, AND AMENDMENT OF THIS DECLARATION**

Section 1. DURATION. This Declaration and all the restrictions, easements, covenants, and other provisions shall run with the land subject to these covenants as outline in previous sections of this Declaration including all amendment thereto and annexations thereunder, and shall become a part of all deeds, contracts, or conveyances of any "lot" herein, and all of the same shall be binding on all parties and persons obtaining title to such lots or such persons who claim under them until January 1, 2049, at which time such covenants and restrictions shall be automatically extended for successive additional ten (10) year periods.

#### Section 2. AMENDMENT OF DECLARATION.

(a) AMENDMENT. After February 1, 2004 the terms of this declaration may only be amended by not less than two-thirds (2/3) of the voting owners.

(b) NOTICE. Notice of intent to seek an amendment to this declaration must be given by the party seeking the amendment to each voting member at least 60 days prior to a regular meeting or a special meeting called for the purpose of considering the amendment, unless there are extraordinary circumstances. Extraordinary circumstances shall be determined by the board of directors, but this term is intended to be narrowly construed. The notice shall contain the substance of the proposed amendment which may only relate to a single subject.

(c) REQUIRED DISCLOSURE AND COMMENTS. The notice specified above shall also include a simple explanation both of the effect of the amendment in lay language, and the reasons which the proponent advances to justify it. The notice and the explanation shall be promptly filed with the clerk along with the proof of mailing. A simple, balanced, narrative summary of the nature of the comments on the amendment shall be circulated to all members by the Board within thirty (30) days thereafter, but not less than 15 days before the scheduled vote.

(d) SIGNED VOTE REQUIRED. Voting shall be either by an owner in person signing before the clerk at the noticed meeting affixed on a voting record attached to the proposed amendment, or absentee by a signed, acknowledged and witnessed copy of the proposed amendment dated after the issuance of the notice of intent to seek the amendment. The clerk shall maintain a record copy of the original instruments bearing such signatures as a part of the permanent records of the association.

(e) **ABSENTEE VOTES--RECISSION.** An absentee vote cast for an amendment may only be withdrawn by a signed, notarized instrument, which shall only become effective if received by the clerk prior to the time the amendment is adopted by the required number of votes.

(f) **TIME LIMIT FOR APPROVAL OF AMENDMENT.** If at the noticed meeting the amendment does not obtain the required votes, further absentee votes may be received and counted by the clerk for a period of six (6) months after the meeting or final submission. If the required margin for adoption is reached under the provision applicable on the date the last vote is received, the amendment shall be promptly recorded in the public records of Okaloosa county, and notice of adoption given to all owners. If not adopted by the vote required hereunder on the date the six (6) months runs, the revision shall be deemed defeated.

(g) **RECORDATION IN PUBLIC RECORDS.** Any such amendments or revisions shall be promptly recorded over the signature of the President or Vice President and with the attestation of the Clerk which shall also contain a notarized certificate by the clerk showing the name of each owner voting for the same, that each are voting owners shown by its records, confirming they constitute the number of votes required hereby cast in conformity hereto at a meeting where the notice required hereby was duly given. This certificate shall also be recorded with such amendatory instrument. Failure to record the amendment, revision or clerk's certificate shall not preclude the enforcement of the amendment as to any member who held title as of the date of such amendment and who was given notice thereof.

## **ARTICLE XIV--GENERAL PROVISIONS**

Section 1. **NON-ENFORCEMENT NOT A WAIVER.** Failure by the Association or of any owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to so thereafter, except where limited above.

Section 2. **ANNEXATION OF PROPERTY.** The Association through its Board of Directors may annex additional contiguous property acquired hereunder, but may not extend the right to use the common elements or the buffer property to any person not owning a lot described in the platted development I. E. Water Oaks Townhomes through Water Oaks Townhomes IV. The annexation shall specify whether the property is to be common area, or buffer area, and shall be recorded in the public records over the signature of the President and attestation of the Secretary.

Section 3. **MORGAGING COMMON AND BUFFER AREAS; SUPERMAJORIT.** The common areas including but not limited to the

recreational areas, may not be encumbered without approval of Two-Thirds (2/3) of the members and the written consent of each prior mortgagee who holds a lien on any of the lots on the real property subject hereto and who has filed a planned unit development rider PROVIDED however that in the year immediately following a Fire, Flood, Hurricane, Tornado, windstorm or other natural disaster in which the common elements are damaged, or at any time when the City of Niceville may fail or decline to make necessary repairs to the existing roads, or provide for drainage needed to avoid or mitigate flooding, or to make provision for security of the neighborhood in time of civil disturbance, or to make provision for backup or alternative sources of electrical power during times of crisis, a simple majority of the voting members may authorize such an encumbrance of the three and one half acre "buffer area" for purpose of repair, replacement or restoration and improvement of common elements, or to make needful provisions for the security of the premises or to exercise the Association's option to purchase a property that has been destroyed or damaged and not repaired within the requisite period. If such encumbrance of the "buffer area" property is so authorized, inasmuch as said buffer area was acquired separately and has been never heretofore been made subject to these declarations it is not subject to any appertent interest of a lot owner to which a planned unit development rider might attached. Accordingly consent from the mortgage holders on individual lots need not be obtained to encumber the buffer area.

Section 4. CONFLICTS; PROHIBITED SELF DEALING. No property of the Association may be given under any circumstances as security for a loan obtained by an owner or purchaser of a unit in water oaks, nor a guaranty or any other form of indebtedness of an owner or purchaser, nor any person other than the Association itself.

Section 5. MORTGAGES--NEW PROPERTY. Nothing herein shall prevent the association from giving purchase money mortgages upon real estate newly acquired under the provisions of these covenants or from incurring unsecured indebtedness in connection with acquisition of real estate, easements, or arrangements to obtain surface water rights for the common use.

Section 6. TRANSFERS; COMMON BUFFER AREAS; UNANIMOUS VOTE. Neither the common elements nor the buffer area, nor any part thereof may be sold, or transferred except with the unanimous agreement of all members, save and except portions of the common areas may be transferred to public agencies in accordance with the provisions of Article II, section 1(b) of the covenants.

Section 7. MAINTENANCE AND CAPITAL RESERVES.

(a) COST REVIEW AND CAPITAL RESERVE ACCOUNT.

The Board of Directors shall from time to time review the current replacement cost and useful life of the common areas, including the recreation areas, and the fixed assets necessarily appurtenant to any of the same, to include the lighting and electrical support systems, well pumps, sprinkler system, gas lights and gas system, pool pumps and other pool support and maintenance equipment, tennis courts, gazebo, fencing around the area, or in the recreation vehicle storage area, and shall set apart from the maintenance fees provided hereinbefore, such amount as shall be determined on the basis of replacement costs and useful life, in a separate reserve account for periodic repair, and maintenance of such items which may only be expended for such purposes.

(b) ADOPTION OF CAPITAL AND REPLACEMENT RESERVE REQUIREMENTS FOR TOWNHOMES. The requirements of Florida Law regarding Working Capital and Replacement Reserves for townhomes, currently in chapter 720 Florida Statutes, and (sic) shall govern provided the equity buffer area may be considered as a part of the casualty contingency reserve.

Section 8. AUDITS. Annual unaudited financial statements shall be made available to all voting owners. Such owners, lenders, holders or guarantors of first mortgages where ever recorded, shall be entitled at their expense to current copies of the Declaration, By-law, and rules regarding the project, and upon request may have access during normal business hours or other reasonable circumstances to the books, records and financial statements of the association. The holder of 50% of the first mortgages shall at its expense be entitled to have an audited financial statement for the immediately preceding fiscal year of the Association prepared if one is not otherwise available. An audited financial statement shall be made once every five (5) years unless such is waived by a unanimous vote of all members attending the annual meeting next preceding the date which such statement is due.

Section 9. MORTGAGE HOLDERS RIGHT TO INFORMATION.

Upon written request to the Association, renewed annually, identifying the name and address of the mortgage holders, mortgage insurer or guarantor, providing the recording information on the Mortgage in the official records, and identifying lot and mortgagor, any such entity will be entitled to timely written notice of:

(a) NOTICE OF CONDEMNATION OR LOSSES. Any condemnation loss or casualty loss known to the Association which affects a material portion of the project owned by the Association or the lot identified in the request.

(b) NOTICE OF DELINQUENCIES. Any delinquency in the payment of assessments or charges owed by an owner of the lot so identified.

(c) NOTICE OF LACK OF INSURANCE. Any lapse, or cancellation of any insurance policy maintained on the property of the Association.

(d) NOTICE OF ACTION REQUIRING MORTGAGOR CONSENT. Any proposed action requiring the consent of any mortgage holder.

(e) OWNER CONSENT TO INFORMATION RELEASE. Each lot owner consents to the release of such information.

Section 10. ASSOCIATION RIGHT TO INFORMATION. Each owner hereof hereby grants to the association a continuing right to obtain from such owner and any mortgagor information on whether on whether a (sic) owner maintains casualty insurance, the name and address of the insurer, the policy number, coverages, limits, and whether the Water oaks Regatta Homeowners Association has been made an additional insured thereunder.

Section 11. PERSONS HELD HARMLESS BY ASSOCIATION. The Association shall indemnify and hold harmless from any loss or judgment including attorneys fees all persons described in Section 13, and 15 of this Article in any such claim except where it appears that there was willful conduct of such a level that the law relating to exemplary damages would be applicable (whether such damages or (sic) or not in the claim).

Section 12. APPLICABLE LAW; COVENANT AGAINST ADMIRALTY LIABILITY OR DAMAGES. This declaration shall be interpreted under the laws of the State of Florida irrespective of the state where a purchaser of a unit may reside, or where a sales transaction regarding the unit may be made. All purchasers agree to exclusive jurisdiction in Florida for disputes hereunder. Neither the divided damages rule nor any statute regarding limitation of liability to the value of the vessel, or any other Admiralty rule of damages or liability shall apply between the members, or between any member and the Association.

Section 13. LIABILITY; ASSOCIATION AND VOLUNTEER PROTECTION. No service performed by any person who volunteers to perform any service for this Association without compensation, including (without limitation of the general class of "volunteers" described above by reason of the listing hereafter), as officers, directors, attorneys, or as a member of any of the function committees hereof, in good faith within the scope of any official duties performed under such volunteer services,

without wanton or willful misconduct shall constitute a basis to impose civil liability upon any of the members or upon the Board of Directors or upon the Association directly, or vicariously, to any claimant whether an owner, guest, licensee, or of whatever status. No suit brought to enforce the provisions of this declaration or any sanction imposed hereunder by the association shall be grounds for an assertion of malicious prosecution, slander of title, or other liability. The definition of F. S. 768.1355 are incorporated herein by reference, except that this association is defined for purposes hereof as the “non-profit” association irrespective of whether it has obtained an exemption from taxation through Title 26 USC Section 501 or otherwise. Subsection 768.1355(2) Florida Statutes shall not be applicable hereto.

Section 14. PREMISES LIABILITY IMMUNITY; MEMBERS; GUESTS. Neither the association, its officers, nor its members or its function committees shall be liable to any member or guest because of the condition of the property the Association who would otherwise have liability for same. (sic) It is expressly the intent of this section to extend its immunity provisions to all negligence of the Association or members acting in its behalf. All guests shall be deemed mere licensees.

Section 15. EMERGENCY AND STORM PROTECTION. The Association, its agents and contractors may go upon any lot hereof to affix, or the exterior of any building hereof, to erect or otherwise make provision for the protection of any building from storm, fire or other like emergency once the same is declared by competent authority without first obtaining the prior consent of the unit owners. Neither the association, nor its agents or contractors shall be liable in trespass for the same, and the doctrine of sudden emergency shall be the standard under which the reasonableness of their actions is judged.

Section 16. SEVERABILITY AND SAVINGS. Invalidation of any one of these covenants or restrictions or of any other provision hereof by judgment of a court of competent jurisdiction shall in no way affect any of the other provisions.

IN WITNESS THEREOF, the undersigned Declarants have signed this instrument on the dates hereinafter indicated by the notary who has attested their signatures.

/Signatures/



## RELATED COVENANT MATERIAL

When the Association approved the amendments to Article X of the Covenants in 2003 (Part A), there were certain related provisions approved (Parts B through D) that were not amendments to the Declaration itself. They were, however, a part of the recorded instrument and are duplicated here as a matter of interest as follows:

### PART B – ADMINISTRATIVE PROVISIONS

The following although not a part of the text of the amended article X shall apply to the amended Article X:

#### SEVERABILITY

If any provision hereof is invalidated the remainder shall remain fully effective notwithstanding the same.

#### EXECUTION IN COUNTERPART

This amendment may be executed in counterpart through signed and notarized copies, with a separate original executed and notarized sheet to be attached to the recorded original. In such instances the original of each executed copy shall be retained by the secretary as a part of the permanent records of the association, and a reduced true copy shall be placed in its safety deposit box archives.

#### WHEN COUNTERPARTS MAY BE EXECUTED

After notice is given of the special meeting relating hereto, executions in counterpart may be made, and additional joinders by counterpart may be submitted at any time at or after such meeting until February 7, 2004. Owners purchasing after February 7, 2003 whose predecessors in title do not have boat lifts, but who did not execute this instrument will have one year from the date of purchase to join therein.

#### EFFECTIVE DATE, SURVIVABILITY.

When the required number of acknowledged signatures have been obtained and the secretary announces the same either at a meeting for incorporation in the minutes, or by a notice of adoption published directly to all members by the secretary if the required number of signatures are obtained between meetings, this amendment shall become immediately effective as to all members of the Association. It shall become effective as to all purchasers, successors, or transferees who immediately upon its recordation in the public records irrespective of actual notice. It shall be effective as to all mortgagors who obtain title by foreclosure, even if the lot foreclosed upon was pledged prior to the effective date hereof, and the obligations hereof shall survive any levy upon, or any tax sale of any lot.

### PART C – BOATLIFT VARIANCE CONSENT

Each person signing below hereby consents under Article X, section 10 of the original Declaration to the granting of a variance by the Association through a recorded “variance quitclaim deed” which may give consent for certain owners to install or maintain a boat lift by their assigned dock under the following conditions only:

- A) That they shall not have installed a boat lift or powered personal watercraft lift, or sailboat lift prior to the consent under Article X Section 10 of the existing

covenants by two thirds (2/3) of the owners of the Association which grants blanket authority to the Board to issue variances and consents for vessel lifts upon the limitations and conditions aforesaid, and

B) That any such variance be expressly conditional upon continued compliance with the Association's limitations and conditions on lifts, which shall be the same as those contained in Section 24 above and which shall be stated verbatim in the recorded instrument.

C) That they shall not prior to the issuance and recordation of the variance have joined as plaintiffs or counter-claimants in any litigation taking a position adverse to the Association relating to any of the matters contained in this instrument.

PART D—BUFFER AREA QUIT CLAIM ANNEXATION DEED  
IN TRUST AS A LIMITED COMMON AREA

THIS QUIT CLAIM ANNEXATION DEED MADE THIS 2<sup>nd</sup> Day of April, 2003 by Water Oaks Regatta Homeowners Association Inc. a Florida not for profit corporation, grantor, to Water Oaks Regatta Homeowners Association Inc. hereinafter grantee, as trustee for the owners of lots in Water Oaks, including each phase thereof in the recorded plats of Water Oaks including Phases I through IV. The grantee Association's mailing address is c/o Joe Buhr, 806 Regatta Circle, Niceville, Fl 32578.

WITNESSETH that the grantor, for and in consideration of Ten Dollars and other good and valuable consideration receipt of which is hereby acknowledged, hereby quit claims, remises, releases, conveys, transfers and sets over unto Grantee in trust all that certain land described in Exhibit A attached hereto all of which is located in Okaloosa County Florida:

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

TO HAVE AND HOLD IN TRUST for the Owners of Units in Water Oaks Regatta Homeowner's Association Inc. on the following restrictions and conditions:

- A. That the same shall be a limited form of "common area" in which the individual lot owners do not have a legal or equitable ownership but only such rights of use as may not be reached under s planned unit development rider.
- B. The provisions of Article XI, Section 5 of the original Declaration shall not be applicable to the buffer area.
- C. The property may not be developed and shall remain vacant land, except that portions of it may be used for "related common area improvements" which may only include landscaping, a secured area to store boats and vehicles, an access road to such area. A tennis court, drainage and erosion control provisions, an irrigation system and/or water transmission lines and other recreational uses which do not impair its nature as a buffer area or constitute a nuisance.
- D. Attached hereto as a part of Composite Exhibit A is a plan showing the areas to be restricted and forever maintained as vacant land and the other areas reserved for recreational uses all as a buffer area.

Except for the exclusion of Article XI Section 5 of the original Declaration from application to any portion the said land, and the trust imposed hereby to limit land uses, the land is annexed and made subject to the other Covenants, Conditions, Easements and Restrictions of Water Oaks Regatta Townhomes [sic] Association Inc. as recorded in Official Records Book 1228 pages 1539-1552 and amended at Official Records Book

1258 page 1433 all in the Public Records of Okaloosa County Florida, pursuant to Article Xi Section 3 of the Original Declaration of Water Oaks Regatta Homeowners Association Inc.; a majority of the Board of Directors having joined in this annexation immediately after the signature of the President/Director and Secretary/Director as evidenced hereby.

In witness whereof we have hereunto set our hands and seals upon the dates incorporated in each such acknowledgement which acknowledgement shall each continue to have force and effect until the recordation hereof and thereafter in any subsequent re-acknowledgement process.

WATER OAKS REGATTA HOMEOWNERS ASSOCIATION, INC  
BY \_\_\_\_\_  
SHERMAN E. ELLER AS PRESIDENT, AS MEMBER OF ITS BOARD  
OF DIRECTORS & INDIVIDUALLY  
1004 Regatta Circle, Niceville, Florida 32578