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Palm Coast, FL 32137

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SURF CLUB II & III POOL & SPA ASSOCIATION**

This Declaration of Covenants Conditions and Restrictions for Surf Club II & III Pool and Spa is made this 13<sup>th</sup> day of December, 2002, by and between Palm Coast Blue Water International Corporation and Blue Water International II Corporation, the fee simple owners of the land described in Exhibits "A" and "C" attached hereto and (referred to collectively as "Declarants").

WITNESSETH

The Declarants are fee simple owners of the land described on Exhibit A attached hereto and incorporated herein by reference or executes this declaration. Declarants intend by this Declaration to impose upon the Exhibit A property a plan for residential pool and spa facilities for the benefit of all owners of Surf Club II and Surf III Condominium units as described on the descriptions contained in Exhibit A for the administration, maintenance, preservation, use, enjoyment of such properties.

Therefore, Declarants hereby declare that all of the properties described in Exhibit A be subjected to the Declaration and shall be held, sold, and conveyed subject to the following easements, reservations, covenants and conditions, which shall run with the land and real property submitted to this Declaration and which shall be binding on all parties having any right, title, or interest in the described property or any part thereof, their heirs, successors in title and assigns, shall inure to the benefit of each owner thereof.

Article I  
Definitions

"Residential facility" shall mean the area, pool, pool decks, spa, rest rooms, utility rooms, and other facilities contained in the Surf Club II & III Pool & Spa facility located within the real property described on Exhibit "B" and incorporated by reference herein.

“Association” shall mean Surf Club II & III Pool & Spa Association, Inc. a non-profit Florida corporation, its successors and assigns. This Association is not a condominium association.

“Board of Directors” or “Board” shall mean the elected body of the Association having its authority under the Articles of Incorporation, Bylaws and Florida law as described in Exhibit “D” and Exhibit “E” attached hereto..

“Unit Owners” shall mean all unit owners in the condominiums of Surf Club II and Surf Club III constructed on the real property described on Exhibit A.

“Common Area” shall mean all real and personal property now or hereafter owned by the Association for the common use and enjoyment of its members.

“Common Expenses” shall mean and include the actual and estimated expenses of operating the Association and its property including any reasonable reserves all as may be imposed hereunder and found to be necessary and appropriate by the Board pursuant to the Declaration, Bylaws, and Articles of Incorporation.

“Condominium Unit” or “Unit” shall mean a condominium unit, apartment, or dwelling as defined in the condominium act as it pertains to Surf Club II and Surf Club III Condominiums.

“Member” shall mean and refer to the person entitled to membership in the Association as provided herein.

“Owner” shall mean and refer to the record owner whether one or more persons of any unit in Surf Club II and Surf Club III Condominium.

## Article II Property Rights

Section 1. General. Every member and owner shall have a right and easement of enjoyment in and to these portions of the common areas for which that owner pays assessments to maintain according to the restrictions, limitations and provisions contained in this Declaration and any deed conveying such property to the Association. Such right and easement may be delegated to members of one family, tenants and invitees subject to such regulations or provisions as may be adopted by the Board. This right and easement of enjoyment shall be appurtenant to and shall pass with the title to every unit, subject to the following reservations, rights and provisions.

(a) the right of the Association to suspend an Owner's voting rights and right to use the facilities as may be located on the Common Area for any period during which any assessment of the Association or such other association as may be made a part of the Properties against said Owner's property remains unpaid, and for any infraction of the Association's rules and regulations for the duration of the infraction and for an additional period thereafter not to exceed thirty (30) days;

(b) the right of the Association to borrow money for the purpose of (1) improving the Properties or any portion thereof, or (2) repairing or improving any facility located or to be located on the Properties, and to give as security for the payment of any such loan, a mortgage or deed of trust conveying all or any portion of the Common Area; provided, however, the lien and encumbrance of any such mortgage or deed of trust given by the Association shall be subject and subordinate to any and all rights, interest, options, easements, and privileges herein reserved or established for the benefit of Declarants, any Owner, any other persons, or the holder of any mortgage or deed of trust, irrespective of when executed, given by Declarants or any Owner encumbering any Lot, Residential Unit, or other property located within said properties.

(c) the easement right of Declarants and its successors and assigns to enter and travel upon, over, and across the Common Area for the purpose of construction, completion and repair of the improvement within the Properties and for all reasonable purposes to further assist and enhance the marketing of properties, Parcels, Residential Units and Commercial Units located or to be located on the Properties;

(d) the right of the Association to charge reasonable admission fees and other fees, including tenant registration fees, for use of any recreational facilities as may be located on the Common Area. Every Owner shall have the right of ingress and egress over, upon, and across the Common Area necessary for access to the Owner's Unit and shall have the right to lateral support. Such rights shall be appurtenant to and pass with the title to each Unit.

Section 2. Use of Common Area. Other than for the right of ingress and egress, the Owners, are hereby prohibited and restricted from using any of the Common Area, except as may be allowed by the Association's Board of Directors or as may be expressly permitted in this Declaration or any amendment or Supplementary Declaration applicable to all or a portion of the Properties. By way of explanation and not limitation no Owner shall park any vehicle on a Common Area (except locations designated by the Board), no planting or gardening shall be done upon the Common Area, and no fences, hedges, or walls shall be done upon the Common Area, except as are installed by Declarants in accordance with the construction of the improvements located thereon or as approved by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners and is necessary for the protection of said Owners.

Section 3. Acknowledgment of Rights of Use. Each owner, and Member of the Association, by acceptance of a conveyance to its unit, is deemed to accept the reservations, rights of use, licenses, easements, and permits existing in, through and over the Common Area.

Section 4. Conveyance of Common Area. The Association covenants to accept title to all or portions of the Common Area when offered by the Declarants or Declarants' successors or assigns.

Section 5. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area and improvements located thereon. No rule or regulation shall, however, diminish, alter, or affect the rights of use, easements, permits, or licenses existing in Declarants, its successors and assigns, or invitees or guests of Declarants. Furthermore, no rule or regulations and amendments thereto shall be furnished by the Association to all Owners. Such regulations shall be binding upon the Owners and users, their families, tenants, guests, invitees, and agents, until and unless such regulations, rule, or requirement is specifically overruled, canceled, or modified by the Board. The Board shall have the authority to impose reasonable monetary fines may be collected by lien and foreclosure, as provided in Article IX, Section 6 hereof. In addition, the Board shall have the right to suspend votes and the right to use the Common Area (other than for access to one's Unit) for violation of its rules, as well as to proceed judicially to enjoin and abate violations of such rules as if such rules were use restrictions contained herein as covenants on the Properties.

Section 6. Construction and Sale Period. Despite any provisions contained in this Declaration to the contrary, it shall be expressly permissible for Declarants to maintain and carry on upon such portion of the Properties as the Declarants may deem necessary, including, but not limited to, the Common Area, such facilities and activities as in the sole opinion of Declarants may be reasonably required, convenient, or incidental to construction or sale, including, without limitation, business offices, signs, model homes, and sales offices, so long as construction on or original offering for sale or all or any portion of the Properties including Residential Units, continues. The right to maintain and carry on such facilities and activities shall include specifically the right to use Units owned by Declarants as models and sales offices and to authorize sales and construction personnel to travel upon and enter the Common Area.

Section 7. No Partition. Except as is permitted in this Declaration, there shall be no partition of the Common Area or any part thereof, nor shall any persona acquiring any interest in any of the Properties or any part thereof seek any such partition, judicial or otherwise, unless the affected area has been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Section 8. Easements for Utilities, Etc. The Declarants hereby reserve the power during the Declarant Control Period to grant blanket easements upon, across, over, and under all of the Property for ingress, egress, installation, replacing, repairing, and maintaining master television antenna or cable systems, controlled access, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, telephones, cable television, and electricity. The Board shall, upon written request of the Declarants grant such easements as may be reasonably necessary for the development of any property described in Exhibit "A". Declarants reserves for Declarants the easements and rights-of-way as shown on any plan of any of the Properties for the purpose of constructing, maintaining, and repairing a system or systems of controlled access, signage, electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, cable television, or any other utility Declarants determine to install in, across, and/or under the Properties; provided, however, reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. The Declarants or any utility company using the easements referred to in this Declaration shall not be liable for any damages done by them or their assigns, agents, employees, or servants to any fences, shrubbery, trees, flowers, improvements, or any other property of the Owner situated on the property covered by said easements.

Section 9. Assignment of Declarants Rights. Declarants may assign its rights as Declarants to all or any portion of the Property or Additional Property to any party or parties who take title to all or any portion of the Property for the purpose of development and sale.

### Article III

#### Association Membership and Voting Rights

Section 1. Membership. Every Person who is an Owner of a Unit that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include persons who hold an interest merely as security for the performance or an obligation, and the giving of a security interest shall not terminate the Owner's membership.

Section 2. Multiple Owners. No Owner, whether one or more Persons shall have more than one membership per Unit owned. Use rights for multiple Owners shall be as authorized and regulated by the Board. In the event the Owner of a Unit is mor than one Person, voting and rights of membership shall be exercised by the Persons holding such membership interest as those Persons shall agree among themselves, except that the rights and privileges of membership appurtenant to a Unit owned by a Person consisting of a husband and wife holding title as tenants by the entirety may be exercised by either spouse. In any case where multiple Persons hold the membership for a particular Unit, the Persons hold such membership shall designate, in a written instrument to the Secretary of the Board the individual authorized to exercise the rights and vote of the membership held by the several Persons making such designation. Failure to make such a designation or any attempt on the part of more than one individual to exercise the vote or other membership rights

appurtenant to a Unit shall result in the suspension of such membership rights and voting right for such Unit until an appropriate designation is made. The membership rights of a Unit owned by a corporation, partnership or other Person except for an individual or group of individuals shall be exercised by the individual designated by the Owner in a written instrument to the Secretary of the Board. Failure to make such a designation, or any attempt to exercise the rights of membership or vote of a particular Unit so owned, by more than one individual purporting to act on behalf of the Owner shall result in the suspension of the membership rights including the voting right of such unit.

Section 3. Voting. The Association membership is as follows:

Members shall be entitled to one equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof. There shall be only one vote per Unit. Unless otherwise specified in this Declaration, the Articles or the Bylaws, the vote for each Unit shall be exercised by the Member.

#### Article IV Association Powers and Responsibilities

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon and shall keep it in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof and the terms and conditions of the Development Order as that document is made applicable to the Association by this Declaration. The Association shall maintain, operate, and preserve the Common Area for the good and benefit of the community.

Section 2. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof and any other personnel as the Association's Board of Directors shall determine to be necessary or desirable for the proper operation of the Properties. Such personnel may be furnished or employed directly by the Association or by any person or entity which whom or with which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of the Declaration. The Declarants and Association may, but shall not be required to, arrange, as an Association expense, with others to furnish trash collection, controlled assess, cable television, and other common services to each Parcel, Residential Unit, or Commercial Unit within. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property.

Section 3. Enforcement of Restrictions. The Association shall have the right and power to enforce each and every restriction herein contained, including those restrictions relating to architectural approval and modification, and shall have all those powers and privileges necessary or desirable to so act.

Section 4. Power to Assess. The Association shall have the right and power, as more particularly set forth in this Declaration, to fix, levy, collect and enforce payment by any lawful means, all charges and assessments pursuant to the terms of this Declaration, to pay all expenses in connection therewith, and all office and other expenses incident to the conduct and affairs of the business of the Association.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws, or its Articles of Incorporation and every other right or privilege given to it herein or otherwise available to a corporation not for profit under Florida law.

#### Article V Maintenance

Section 1. Association Responsibility. The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of:

1. Landscaping on common areas.
2. All potable water lines and associated property owned by or dedicated to the Association, whether located on Common Area or not.
3. All wastewater treatment plants, percolation ponds, collector lines, lift stations and associated property for the collection and treatment of wastewater on the property owned by or dedicated to the Association, whether located on Common Area or not.
4. All recreational facilities of whatever nature, including without limitation, beach clubs, recreation center, beach walkovers, pools, spas, bicycle paths, foot paths all as may be from time to time constructed by Declarants on any Common Area.
5. All storm water and surface water management lakes (including the littoral zones and slopes) weirs, culverts and associated structures.

6. All other utility lines owned by the Association, whether located on Common Areas or not.

In the event the Board of Directors of the Association determines that the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, Owner's family, occupants, guests, lessees, or invitees, the Association, except in the event of an emergency situation, shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the the notice shall set forth with reasonable particularity the maintenance, repair, owners cost or replacement deemed necessary and the cost thereof. The noticed party shall have fifteen (15) days within which to complete the required maintenance, repair, or replacement; or, in the event that such maintenance, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence such work which shall be completed within a reasonable time. In the event of an emergency situation, the Association need not send the notice to Owners referred to herein. If any Owner does not comply with the provisions hereof, or if there is an emergency situation, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and the cost shall be added to and become a part of the assessment to which such party is subject and shall become a lien against the Unit of such Owner.

#### Article VI

#### Insurance and Casualty or Liability Losses

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Areas or Association owned property against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazzard. The Board shall also obtain a public liability policy applicable to the Common Area covering the Association, its officers, directors, members, and agents. The public liability policy shall have at least \$100,000.00 combined single limit coverage, so long as such coverage is reasonably available. If such coverage ceases to be reasonably available, the Association shall carry the next closest equivalent to such coverage that is available. Unless otherwise provided by the Board of Directors, the cost of all such insurance coverage shall be paid from the Common Expense. Each insurance policy may contain a deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written the name of the association, as trustee, for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licenses to do business in Florida and holding a rating of A or better in the Financial Category as established by A.M. Best Company, Inc. if available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area or other Association property shall be for the benefit of the Owners and their mortgagees, as their interest may appear.

(c) Exclusive authority to adjust losses under policies in force on any portion of the Properties, including the Common area, obtained by the Association shall be vested in the Association's Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.

(e) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if reasonably available, with an annual review by one or mor qualified persons, designated by the Board.

(f) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the Insurer as to any claims against the Association's Board of Directors, its Manager, the owners and their respective tenants, servants, agents, and guests;

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

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual owners;

(iv) that no policy may be canceled, invalidated, or suspended on account any defect of the conduct of any director, officer, or employee of the Association or its duly authorized Manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any owner or mortgagee; and

(v) that any "other insurance" clause in any policy exclude individual owners' policies from consideration;

(vi) no material change or cancellation of coverage without thirty day's prior written notice.

In addition to the other insurance require by this Section, the Board shall obtain, as a Common Expense, workmen's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other personal handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months; assessments, plus reserve on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or after making such settlement as is necessary and appropriate with the affected Owner or owners and their mortgagee(s), as their interests may appear, shall be retained by and for the benefit of the Association. This is a covenant for the benefit of any mortgagee of any part of the Properties and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 3 of this Article, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, available proceeds shall be disbursed in the manner as provided for excess proceeds in Section 2 (a) hereof.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total vote of the Association and the Declarants shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided however, that such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Property by its respective owner or owners in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners ultimately responsible for the payment of the policy premium in the same proportion as an Owner's assessment bears to the Association's budget. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

#### Article IX Assessments

Section 1. Creation of Classes of Assessments. The following assessments are hereby created for the common expenses of the Associations as may be from time to time specifically authorized by the Board of Directors:

(a) General Assessments. General Assessments shall be levied against all Units subject to this Declaration and shall be used to pay expenses determined by the Board for the benefit of the Association, its members, and the Properties as whole, including, by not limited to operation, maintenance and insurance of all facilities used to provide wastewater treatment service to the Property as a whole and expenses otherwise incurred by the Association with its rights, powers and privileges. The General Assessment rate levied against and payable by a particular Unit shall be determined by dividing the total General Assessment expenses for the Association by the total number of Units.

Section 2. Commencement of Assessments. Each Unit shall begin paying its Assessments commencing with the first day of the calendar month following the day a certificate of occupancy is issued by the local building official for the Association Facility.

Section 3. Assessment Records, Inspection. The Board of Directors of the Association shall prepare a roster of the Assessments applicable, which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or member's mortgagee with a written statement of the unpaid charges due from such Member.

Section 4. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed or contract for deed, whether or not it shall be so expressed such instrument, is deemed to covenant and agree to pay to the Association, in accordance with the provisions hereof:

- (a) annual assessments or charges applicable to a given Unit;
- (b) special assessments, such assessments to be established and collected as hereinafter provided; and
- (c) specific assessments against any Unit which is established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with Article IV, hereof.

All such assessments, together with interest at the highest rate permitted by applicable law, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each assessment is made, all as provided herein. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration of the annual assessment or delinquents. The assessments shall be paid monthly, in advance, unless otherwise provided by a two-thirds (2/3rds) majority of the Board of Directors.

In the event that the required vote disapproves the proposed budget or the Board fails, for any reason, to determine the budget or a portion thereof for the succeeding year, then and until such time as a budget or portion of a budget shall have been determined, as provided herein, the budget and assessments in effect for the current year shall continue for the succeeding year.

Despite anything also contained herein, the amount of the budgeted assessment in any particular year may be increased by the Board of Directors of the Association in a succeeding year without a vote of or consideration by the Members, so long as the proposed assessment does not

exceed the previous year's budget by more than fifteen percent (15%).

All votes eligible to be cast pursuant to this Section shall be cast by the Member.

Section 5. Special Assessments. In addition to the assessments authorized elsewhere herein, the Association may levy a Special Assessment in any year. The Board, by majority vote, may impose any special assessment or assessments up to a total of \$10,000 per year without a vote by the Members or Officers otherwise entitled to vote to disapprove the annual assessment budget for the Property or Parcel as the case may be. Any special assessment beyond the \$10,000 per year limit shall require approval by Voting Members representing 66% of the Class A votes of Members subject to such assessment and the Class B member, if any.

Section 6. Lien for Assessments. To secure the payment of the Assessments established hereby and to be levied on the Units, there shall be and is hereby reserved a Lien for the benefit of the Association. This Lien shall be enforceable through appropriate proceedings at law by such beneficiary. Each such Lien shall, however, be secondary, subordinate, and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Unit to secure the payment of monies advanced or to be advanced on account of the purchase price (Purchase Money Mortgage) and/or the construction (construction mortgage) of improvements on any such Unit to the extent any such assessments charge has accrued and been unpaid but not recorded in the Public Records of Flagler County, Florida prior to foreclosures of any Liens arising from Purchase Money or Construction Mortgages. As a condition precedent to any proceeding to enforce such Lien upon any Unit upon which there is an outstanding valid and subsisting recorded first mortgage of which the Association has been informed of by written notice given by the holder thereof, together with a copy of the recorded mortgage instrument, the Association shall give the holder of such recorded first mortgage lien sixty (60) days written notice of such proposed action, which notice shall be sent to the nearest office of such first mortgage lienholder, the Association shall acknowledge in writing its obligation to give the foregoing notice with respect to the particular Unit covered by such first mortgage lien to the holder thereof. Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee. Suit to recover a money judgment for unpaid Assessments for Common Expenses, costs and attorney's fees shall be maintainable in a suit at law against the Owner of the Unit responsible for that Assessment without foreclosing or waiving the lien securing the same.

Section 7. Effect of Nonpayment of Assessments: Additional Maintenance Fee. Any Assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than thirty (30) days shall incur an additional maintenance fee in an amount as the Board may determine from time to time, but not to exceed Ten (\$10.00) Dollars or ten percent (10%) of the initial assessment amount owed, whichever is greater.

Article XII  
Use Restrictions

The Properties shall be used only for recreational, and related purposes.

Section 1. Signs and Billboards. No signs, billboards, posters or advertising devices of any character shall be erected, permitted, or maintained on any portion of the Property without the express prior written consent of the Board of Directors. This provision shall not apply to any sign or advertising device maintained or erected by Declarants part of the Declarants sales of Units on the Property.

Section 2. Storage and Disposal of Garbage and Refuse. Subject to Declarants' reserved rights, no property shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste materials shall not be kept, except in sanitary containers constructed of metal, plastic, or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Unit shall be used for the open storage or any materials, whatsoever, which storage is visible for the street.

Section 3. Occupants Bound. All provisions of this Declaration, Bylaws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of his or her Unit to comply with the Declaration, Articles, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Common Areas caused by such Occupants, notwithstanding the fact that such Occupants of a Unit are fully liable and may be sanctioned by any violation of the Declaration, Articles, Bylaws and rules and regulations adopted pursuant thereto.

Section 4. Animals and Pets. No animals, livestock, or poultry or any kind shall be kept on any portion of the Properties.

Section 5. Nuisance. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity or the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause harassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious,

dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

Article XV  
General Provisions

Section 1. Coverage and Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns. The covenants, conditions, and restrictions of this Declaration, as they may be amended from time to time, shall run with and bind the Properties for a term of forty (40) years from the date of recordation, unless amended, as herein provided. After such initial term, such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each; unless within sixty (6) days before commencement of any such ten (10) years period, these covenants are extinguished by a written instrument executed by the Members holding at least seventy-five percent (75%) of the total votes attributable to all Units in the Property and, if existing, the approval of the Declarants and such instrument is recorded. Notwithstanding anything herein to the contrary, the Association shall not be dissolved nor these Covenants extinguished until such time as adequate steps have been taken by the Association to ensure the continued operation and maintenance of the Common Areas in full compliance with all applicable laws, rules and regulations.

Section 2. Amendment. Prior to the conveyance of the first Unit, Declarants may unilaterally amend this Declaration. After such conveyance, the Declarants may amend this Declaration so long as it still owns property described in Exhibit "A" for development as part of the Properties, and so long as the amendment has no material adverse effect upon any right of any Owner. No amendment required by any state agency will be deemed material. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent (75%) of the votes held by Members other than the Declarants. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Flagler County, Florida. If an Owner consents to any amendment to this Declaration, the Articles or the Bylaws, it will be conclusively presumed that such owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege or Declarants without the written consent of Declarants or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien or any Mortgage held by a Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

Section 3. Indemnification. The Association shall indemnify every office and director against any and all expenses, including counsel fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake or judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way be null, void, or voidable for violation of the rule against perpetuities.

Section 5. Reservation From Unit Conveyance. It is expressly agreed and understood that the title conveyed by Declarants to any Unit or within the Properties by contract, deed, or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph, telephone, or television purposes and shall convey no interest in any pipes, lines, poles, or conduits, or in any utility facility or appurtenances thereto, constructed by or under authority of Declarants or any easement owner, or their agents through, along, or upon the premises affected thereby, or any part thereof, to serve said land or any other portion of the Properties, and where not affected, the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party, and such right is hereby expressly reserved.

Section 6. Incorporation by Reference. All dedications, limitations, restrictions, and reservations shown on any subdivision plat or are incorporated herein and made a part hereof as if fully set forth herein and shall be constructed as being adopted in each and every contract, deed, or conveyance executed or to be executed or to be executed by or on behalf of Declarants and, thereafter, each successive Owner, conveying any of the Properties, whether specifically referred to therein or not.



PLAT OF BOUNDARY SURVEY OF :PARCEL #2 (PARCEL 6-A AND PART OF PARCEL 6-B MATANZAS SHORES)

A PARCEL OF LAND LYING IN GOVERNMENT SECTION 38, TOWNSHIP 10 SOUTH, RANGE 31 EAST, BEING A PORTION OF THE "SUBDIVISION PLAT SECTION 88, PALM COAST" RECORDED IN MAP BOOK 26, PAGES 4 AND 5 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; A POINT OF REFERENCE BEING THE INTERSECTION OF THE SOUTHERLY LINE OF SAID GOVERNMENT SECTION 38 EXTENDED WESTERLY TO THE EASTERLY RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY (500' RIGHT-OF-WAY), THENCE NORTH 17°14'46" WEST ALONG SAID RIGHT-OF-WAY 551.91 FEET TO A POINT BEING THE NORTHWEST CORNER OF "WILLOW WOODS SUBDIVISION" RECORDED IN MAP BOOK 5, PAGE 76, THENCE DEPARTING SAID INTRACOASTAL WATERWAY NORTH 69°39'06" EAST ALONG THE COMMON BOUNDARY OF SAID "WILLOW WOODS" AND SAID "SECTION 88, PALM COAST" 3024.54 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A, RECORDED IN OFFICIAL RECORDS BOOK 388, PAGES 110 THROUGH 112, SAID POINT BEING ON A CURVE, THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY 585.77 FEET ALONG A CURVE TO THE LEFT (CONCAVE WESTERLY) HAVING A CENTRAL ANGLE OF 28°21'53", A RADIUS OF 1183.24 FEET, A CHORD BEARING OF NORTH 27°12'50" WEST AND A CHORD DISTANCE OF 579.81 FEET TO A POINT OF TANGENCY OF STATE ROAD A-1-A, THENCE DEPARTING SAID POINT AND WESTERLY RIGHT-OF-WAY NORTH 48°36'13" EAST 180.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID RIGHT-OF-WAY AND THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTH 41°23'47" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 608.11 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY NORTH 50°22'12" EAST A DISTANCE OF 329.63 FEET, THENCE NORTH 17°25'35" EAST A DISTANCE OF 60.85 FEET, THENCE NORTH 69°38'32" EAST A DISTANCE OF 55.09 FEET, THENCE SOUTH 20°21'28" EAST A DISTANCE OF 437.78 FEET TO A POINT ON A CURVE, THENCE SOUTHERLY 604.66 FEET ALONG A CURVE TO THE RIGHT (CONCAVE WESTERLY) HAVING A CENTRAL ANGLE OF 12°18'29", A RADIUS OF 2814.79 FEET, A CHORD BEARING OF SOUTH 14°12'13" EAST AND A CHORD DISTANCE OF 603.50 FEET TO A POINT ON THE EASTERLY LINE OF SAID STATE ROAD A-1-A RIGHT-OF-WAY, THENCE NORTH 41°23'47" WEST ALONG SAID EASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 335.72 FEET TO THE POINT OF BEGINNING, EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

A PARCEL OF LAND LYING IN GOVERNMENT SECTION 38, TOWNSHIP 10 SOUTH, RANGE 31 EAST, BEING A PORTION OF THE "SUBDIVISION PLAT SECTION 88, PALM COAST" RECORDED IN MAP BOOK 26, PAGES 4 AND 5 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; A POINT OF REFERENCE BEING THE INTERSECTION OF THE SOUTHERLY LINE OF SAID GOVERNMENT SECTION 38 EXTENDED WESTERLY TO THE EASTERLY RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY (500' RIGHT-OF-WAY), THENCE NORTH 17°14'46" WEST ALONG SAID RIGHT-OF-WAY 551.91 FEET TO A POINT BEING THE NORTHWEST CORNER OF "WILLOW WOODS SUBDIVISION" RECORDED IN MAP BOOK 5, PAGE 76, THENCE DEPARTING SAID INTRACOASTAL WATERWAY NORTH 69°39'06" EAST ALONG THE COMMON BOUNDARY OF SAID "WILLOW WOODS" AND SAID "SECTION 88, PALM COAST" 3024.54 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A, RECORDED IN OFFICIAL RECORDS BOOK 388, PAGES 110 THROUGH 112, SAID POINT BEING ON A CURVE, THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY 585.77 FEET ALONG A CURVE TO THE LEFT (CONCAVE WESTERLY) HAVING A CENTRAL ANGLE OF 28°21'53", A RADIUS OF 1183.24 FEET, A CHORD BEARING OF NORTH 27°12'50" WEST AND A CHORD DISTANCE OF 579.81 FEET TO A POINT OF TANGENCY OF STATE ROAD A-1-A, THENCE DEPARTING SAID POINT AND WESTERLY RIGHT-OF-WAY NORTH 48°36'13" EAST 180.00 FEET TO A POINT ON THE EASTERLY LINE OF SAID RIGHT-OF-WAY, THENCE NORTH 41°23'47" WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 608.11 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY NORTH 50°22'12" EAST A DISTANCE OF 329.63 FEET, THENCE NORTH 17°25'35" EAST A DISTANCE OF 1.89 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 35°57'32" EAST 91.00 FEET, THENCE SOUTH 58°44'28" EAST A DISTANCE OF 42.43 FEET, THENCE NORTH 69°45'59" EAST A DISTANCE OF 40.40 FEET, THENCE NORTH 20°21'28" WEST A DISTANCE OF 167.58 FEET, THENCE SOUTH 69°38'32" WEST A DISTANCE OF 55.09 FEET, THENCE SOUTH 17°25'35" WEST 58.96 FEET TO THE POINT OF BEGINNING.

The property described hereon is in zone "B" per the Flood Insurance Rate Map, Community Panel Number 120085 0035 C, dated 15 July, 1992.

Exhibit "A"

Page 1 of 2

PARCEL #1 (PART OF PARCEL 6-B AND 6-C MATANZAS SHORES)

A PARCEL OF LAND LYING IN GOVERNMENT SECTION 38, TOWNSHIP 10 SOUTH, RANGE 31 EAST, BEING A PORTION OF THE "SUBDIVISION PLAT SECTION 88, PALM COAST" RECORDED IN MAP BOOK 26, PAGES 4 AND 5 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; A POINT OF REFERENCE BEING THE INTERSECTION OF THE SOUTHERLY LINE OF SAID GOVERNMENT SECTION 38 EXTENDED WESTERLY TO THE EASTERLY RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY (500' RIGHT-OF-WAY); THENCE NORTH 17°14'46" WEST ALONG SAID RIGHT-OF-WAY 551.91 FEET TO A POINT BEING THE NORTHWEST CORNER OF "WILLOW WOODS SUBDIVISION" RECORDED IN MAP BOOK 5, PAGE 76, THENCE DEPARTING SAID INTRACOASTAL WATERWAY NORTH 69°39'06" EAST ALONG THE COMMON BOUNDARY OF SAID "WILLOW WOODS" AND SAID "SECTION 88, PALM COAST" 3024.54 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A (180' RIGHT-OF-WAY), SAID POINT BEING ON A CURVE, THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY 585.77 FEET ALONG A CURVE TO THE LEFT (CONCAVE WESTERLY) HAVING A CENTRAL ANGLE OF 28°21'53", A RADIUS OF 1183.24' FEET, A CHORD BEARING OF NORTH 27°12'50" WEST AND A CHORD DISTANCE OF 579.81 FEET TO A POINT OF TANGENCY, THENCE NORTH 41°23'47" WEST ALONG SAID RIGHT-OF-WAY 875.00 FEET, THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE NORTH 48°36'13" EAST 180.00 FEET TO A POINT OF CURVATURE ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A AND THE POINT OF BEGINNING OF THIS DESCRIPTION, THENCE NORTHERLY ALONG SAID RIGHT-OF-WAY 593.85 FEET ALONG A CURVE TO THE RIGHT (CONCAVE EASTERLY) HAVING A CENTRAL ANGLE OF 28°45'22", A RADIUS OF 1183.24 FEET, A CHORD BEARING OF NORTH 27°01'06" WEST AND A CHORD DISTANCE OF 587.64 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY AND CURVE NORTH 69°38'32" EAST 433.52 FEET, THENCE SOUTH 65°21'28" EAST 106.70 FEET, THENCE NORTH 69°38'32" EAST 58.53 FEET, THENCE SOUTH 20°21'28" EAST 600.44 FEET, THENCE SOUTH 69°38'32" WEST 55.09 FEET, THENCE SOUTH 17°25'35" WEST 60.85 FEET, THENCE SOUTH 50°22'12" WEST 329.63 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A, THENCE NORTH 41°23'47" WEST 266.89 FEET TO THE POINT OF BEGINNING.

The property described hereon is in zone "B" per the Flood Insurance Rate Map, Community Panel Number 120085 0035 C, dated 15 July, 1992.

POOL SITE (PART OF PARCEL 6-B AND 6-C MATANZAS SHORES)

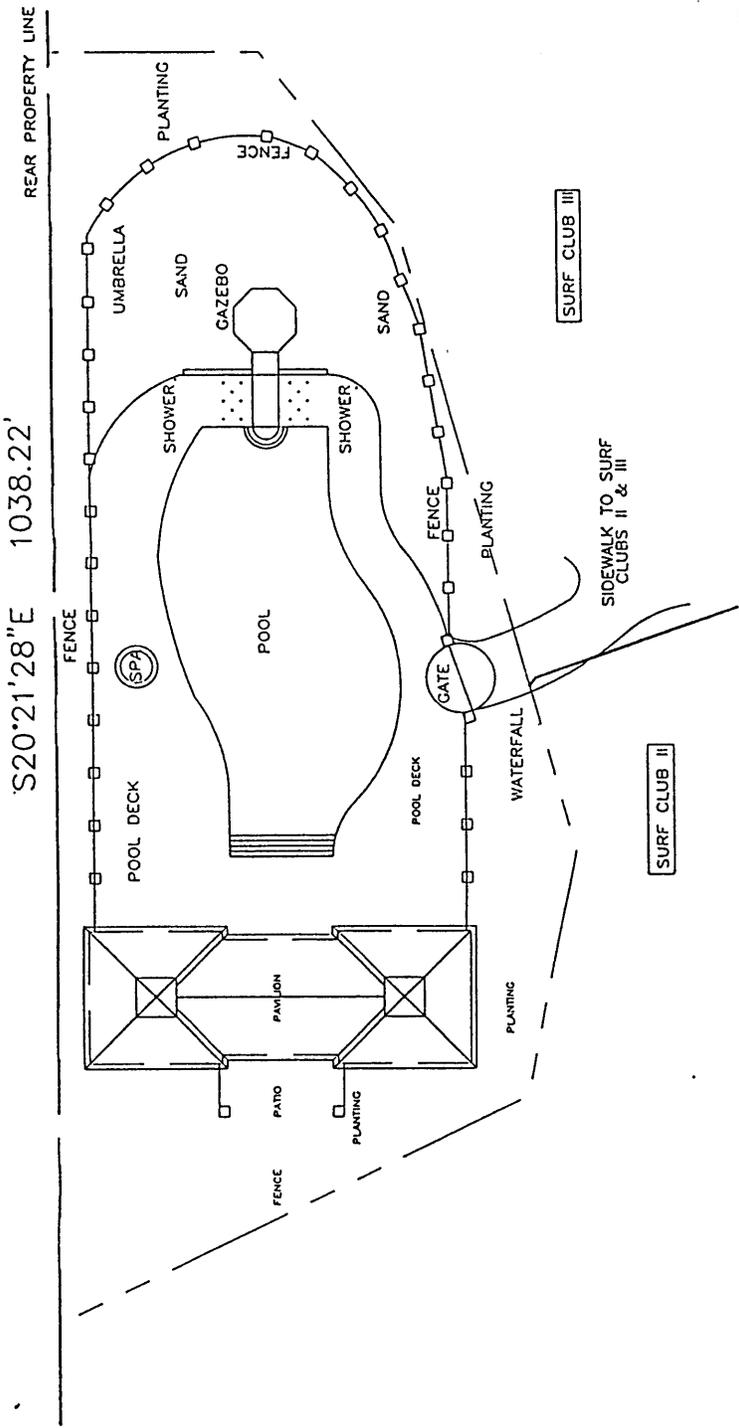
A PARCEL OF LAND LYING IN GOVERNMENT SECTION 38, TOWNSHIP 10 SOUTH, RANGE 31 EAST, BEING A PORTION OF THE "SUBDIVISION PLAT SECTION 88, PALM COAST" RECORDED IN MAP BOOK 26, PAGES 4 AND 5 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; A POINT OF REFERENCE BEING THE INTERSECTION OF THE SOUTHERLY LINE OF SAID GOVERNMENT SECTION 38 EXTENDED WESTERLY TO THE EASTERLY RIGHT-OF-WAY OF THE INTRACOASTAL WATERWAY (500' RIGHT-OF-WAY); THENCE NORTH 17°14'46" WEST ALONG SAID RIGHT-OF-WAY 551.91 FEET TO A POINT BEING THE NORTHWEST CORNER OF "WILLOW WOODS SUBDIVISION" RECORDED IN MAP BOOK 5, PAGE 76, THENCE DEPARTING SAID INTRACOASTAL WATERWAY NORTH 69°39'06" EAST ALONG THE COMMON BOUNDARY OF SAID "WILLOW WOODS" AND SAID "SECTION 88, PALM COAST" 3024.54 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD A-1-A (180' RIGHT-OF-WAY), SAID POINT BEING ON A CURVE, THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY 585.77 FEET ALONG A CURVE TO THE LEFT (CONCAVE WESTERLY) HAVING A CENTRAL ANGLE OF 28°21'53", A RADIUS OF 1183.24' FEET, A CHORD BEARING OF NORTH 27°12'50" WEST AND A CHORD DISTANCE OF 579.81 FEET TO A POINT OF TANGENCY, THENCE NORTH 41°23'47" WEST ALONG SAID RIGHT-OF-WAY 875.00 FEET, THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE NORTH 48°36'13" EAST 180.00 FEET TO A POINT OF CURVATURE ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID STATE ROAD A-1-A, THENCE NORTHERLY ALONG SAID RIGHT-OF-WAY 593.85 FEET ALONG A CURVE TO THE RIGHT (CONCAVE EASTERLY) HAVING A CENTRAL ANGLE OF 28°45'22", A RADIUS OF 1183.24 FEET, A CHORD BEARING OF NORTH 27°01'06" WEST AND A CHORD DISTANCE OF 587.64 FEET, THENCE DEPARTING SAID RIGHT-OF-WAY AND CURVE NORTH 69°38'32" EAST 433.52 FEET, THENCE SOUTH 65°21'28" EAST 106.70 FEET, THENCE NORTH 69°38'32" EAST 58.53 FEET, THENCE SOUTH 20°21'28" EAST 525.14 FEET, TO THE POINT OF BEGINNING; THENCE SOUTH 43°57'43" WEST 100.61 FEET, THENCE SOUTH 09°11'14" EAST 47.91 FEET, THENCE SOUTH 35°57'32" EAST 123.49 FEET, THENCE SOUTH 58°44'28" EAST 42.43 FEET, THENCE NORTH 69°45'59" EAST 40.40 FEET, THENCE NORTH 20°21'28" WEST 242.89 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"



11/23/02

*2/2/02*  
*[Signature]*



S20°21'28"E 1038.22'

Surf Club II & III Pool & Spa Association, Inc.  
FLOOR PLAN- POOL

**THE HASKELL COMPANY**  
AMERICA'S DESIGN-BUILD LEADER

# State of Florida

OFF REC 0959 PAGE 1653

OFF REC 0983 PAGE 0432



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of SURF CLUB II & III POOL & SPA ASSOCIATION, INC., a Florida corporation, filed on December 10, 2002, as shown by the records of this office.

The document number of this corporation is N02000009532.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Eleventh day of December, 2002



CR2EO22 (7-02)

*Jim Smith*

Jim Smith  
Secretary of State

FILED  
02 DEC 10 PM 1:34  
SECRETARY OF STATE  
TALLAHASSEE FLORIDA

**ARTICLES OF INCORPORATION  
OF  
SURF CLUB II & III POOL & SPA ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with Chapters 617 of the Florida Statutes, the undersigned hereby associate into a corporation for the purpose and with the powers hereinafter set forth, and to that end, do, by these Articles of Incorporation, certify and set forth the following:

**EXPLANATION OF TERMINOLOGY**

A. The terms contained in these Articles of Incorporation which are contained in Chapter 617, Florida Statutes, as amended prior to the date of execution of these Articles, shall have the meaning of such terms set forth in such Act.

B. "Association" as used herein shall mean the Surf Club II & III Pool & Spa Association, Inc., a Florida corporation not for profit, the corporation formed by these Articles, its successors or assigns.

**ARTICLE I  
NAME**

The name of this Association shall be the SURF CLUB II & III POOL & SPA ASSOCIATION, INC., whose present address is 21 Old Kings Road North, Suite B101, Palm Coast, Palm Coast, Florida, 32137.

**ARTICLE II  
PURPOSE OF ASSOCIATION**

The purpose for which the Association is organized is for the ownership operation, maintenance, repair and replacement of recreational facilities located on real property in Flagler County, Florida described on Exhibit "A" attached hereto and described on the Site Plan attached hereto as Exhibit "B".

**ARTICLE III  
POWERS**

The Association shall have the following powers which shall be governed by the following provisions:

1. The Association shall have all of the common law and statutory powers of a corporation not for profit.

2. The Association shall have all of the powers of an association and shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

(a) to make, establish and enforce reasonable rules and regulations governing the use of said recreational facilities referred to herein;

(b) to make, levy, collect and enforce Assessments against its Members to provide funds to pay for the expenses of the Association, the maintenance, operation, security, insurance and management of such recreational facilities, in the manner provided herein and to use and expend the proceeds of such Assessments in the exercise of the powers and duties of the Association;

(c) to collect the Expenses for each said recreational facility administered by the Association;

(d) to maintain, repair, replace and operate each said recreational facility;

(e) to reconstruct improvements of each said recreational facility in the event of casualty or other loss;

(f) to enforce by legal means the provisions of these Articles and any rules and regulations;

(g) to employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation and management of said recreational facilities and to enter into any other agreements consistent with the purposes of the Association;

(h) to carry out its duties and obligations under these documents.

3. All funds and the titles to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of these Articles and the By-Laws.

4. The Association shall make no distribution of income to its members, Directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency.

5. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the By-Laws.

**ARTICLE IV  
MEMBERS**

The qualification of members, the manner of their admission to membership in the Association, the manner of the termination of such membership and voting by members shall be as follows:

1. Membership in the Association shall be established by the ownership of condominium units within Surf Club II and Surf Club III, as evidenced by an instrument of conveyance. New Members shall deliver a true copy of the instrument of acquisition of title to the Association and thereafter shall be automatically a member of this Association.
2. No member may assign, hypothecate or transfer in any manner his membership in the Association or his share in the funds and assets of the Association except as an appurtenance to his condominium unit in Surf Club II or Surf Club III.
3. Each owner shall be entitled to one (1) vote, which vote shall be exercised and cast in accordance with the By-Laws.

**ARTICLE V  
TERM**

The term for which this Association is to exist shall be perpetual.

**ARTICLE VI  
INCORPORATOR**

The Incorporator of the Association is William Harkins whose address is 21 Old Kings Road North, Suite B101, Palm Coast, Florida 32137.

**ARTICLE VII  
OFFICERS**

A. The affairs of the Association shall be managed by a President, one (1) or more Vice Presidents, a Secretary and a Treasurer and, if elected by the Board of Directors, an Assistant Secretary and an Assistant Treasurer, which officers shall be subject to the directions of the Board of Directors.

B. The Board of Directors shall elect the President, a Vice President, the Secretary, the Treasurer and as many other Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board of Directors shall from time to time determine appropriate. Such officers shall be elected annually by the Board of Directors at the first meeting of the Board of Directors; provided, however, such officers may be removed by such Board of Directors, and other persons may be elected by the

Board of Directors as such officers in the manner provided in the By-Laws. The President shall be a Director of the Association, but no other officer need be a Director. The same person may hold two (2) offices; provided, however, the offices of President and Vice President shall not be held by the same person, nor shall the same person hold the office of President who holds the office of Secretary, Assistant Secretary, or Treasurer.

### ARTICLE VIII FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board of Directors are as follows:

President	-	Valerie Kaan
Vice President	-	William Harkins
Secretary/Treasurer	-	Greg Robinson

### ARTICLE IX BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of Directors (the "First Board") shall initially be three (3). The Board of Directors may increase the number of Directors to seven (7).

B. The names and addresses of the persons who are to serve as the First Board are as follows:

William Harkins  
Greg Robinson  
Judith Kincaid

C. The Initial Election Meeting and Majority Election Meeting shall be called by the Board of Directors by written notice given to all members in accordance with the By-Laws; provided, however, that the members shall be given at least sixty (60) days notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Purchaser Members and the number of Directors to be designated by Declarant.

D. Declarant shall cause all of its designated Directors to resign ("Declarant's Resignation Event") when Declarant no longer holds for five percent (5%) of the condominium units in Surf Club II and Surf Club III. If Declarant's Resignation Event shall occur after the Majority Election Meeting, then upon the occurrence of the Declarant's Resignation Event, the Directors elected by Purchaser Members shall appoint a successor Director to fill the vacancy caused by the

resignation or removal of Declarant's designated Director. Such successor Director shall serve until the next annual members' meeting, at which time the members shall elect his successor. If, upon the occurrence of the Declarant's Resignation Event, the Majority Election Meeting has not occurred, the remaining Purchaser Director shall call the Majority Election Meeting in accordance with the By-Laws and the Act at which all of the Directors shall be elected by the Purchaser Members.

E. At each annual members' meeting held subsequent to the Declarant's Resignation Event, the Directors shall be elected by the members.

F. Upon the resignation of a Director who has been elected or designated by Declarant or the resignation of an officer of the Association who has been elected by the First Board or the Initial Elected Board, the Association shall be deemed to have remised, released, acquitted, satisfied and forever discharged such officer or Director of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or Purchaser Members had, now have, or which any personal representative, successor, heir or assign of the Association or Purchaser Members hereafter can, shall or may have against said officer or Director for, upon, or by reason of any matter, cause or thing whatsoever, relating to his actions as such officer or Director, excepting only willful misconduct or gross negligence, from the beginning of the world to the day of such resignation. Members of the Board of Directors designated by the Declarant have to be members of the Association.

## ARTICLE X INDEMNIFICATION

Every Director and every officer of the Association (and the Directors and officers as a group) shall be indemnified by the Association against all expenses and liabilities, including counsel fees (at all trial and appellate levels or if no litigation or proceeding has been instituted) reasonably incurred by or imposed upon him or them in connection with any proceeding, litigation, claim or settlement to which he may be made a party by reason of his being or having been a Director or officer of the Association; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement. The foregoing provisions for indemnification shall apply whether or not he is a Director or officer at the time such expenses and liabilities are incurred. If in such litigation, proceeding, claim, or settlement a Director or officer admits or is adjudged guilty of willful misfeasance or malfeasance or gross negligence in the performance of his duties, the indemnification provisions of these Articles shall not apply. Otherwise, the foregoing rights to indemnification shall be in addition to and not exclusive of any and all right of indemnification to which a Director or officer may be entitled whether by statute or common law.

## ARTICLE XI BY-LAWS

The By-Laws of the Association shall be adopted by the First Board of Directors, and thereafter may be altered, amended or rescinded in the manner provided for in the By-Laws and the Act.

**ARTICLE XII  
AMENDMENTS**

1. The proposed amendment shall be adopted by the affirmative vote of a majority of the votes of all members at an annual members meeting or special meeting of the members. Any number of amendments may be submitted to the members and voted upon by them at one meeting; or

2. An amendment may be adopted by a written statement signed by a majority of all members setting forth their consent to the amendment.

A. A copy of each amendment shall be certified by the Secretary of State of Florida.

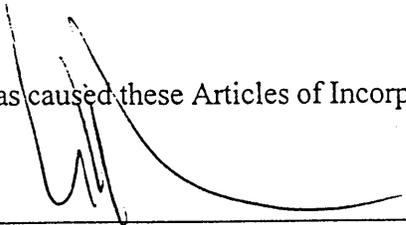
B. No amendment may be made to these Articles which shall abridge, amend or alter the rights of Declarant, including the right to designate and select the Directors as provided in Article IX hereof, or the provisions of this Article XII, without the prior written consent of Declarant.

C. Notwithstanding the foregoing provisions of this Article XII, the Board of Directors may amend these Articles without a vote of the members to correct a scrivener's error therein.

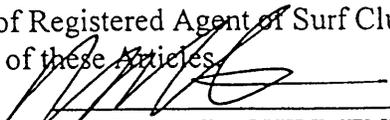
**ARTICLE XIII  
REGISTERED OFFICE AND REGISTERED AGENT**

The street address of the initial registered office of the Association is 4 Old Kings Road North, Suite B, Palm Coast, Florida 32137 and the initial registered agent of the Association at that address shall be Michael D. Chiumento.

IN WITNESS WHEREOF, the Incorporator has caused these Articles of Incorporation to be executed this 7 day of December, 2002.

  
\_\_\_\_\_  
WILLIAM HARKINS

The undersigned hereby accepts the designation of Registered Agent of Surf Club II & III Pool & Spa Association, Inc., as set forth in Article XIV of these Articles.

  
\_\_\_\_\_  
MICHAEL D. CHIUMENTO

STATE OF FLORIDA )  
 ) SS:  
COUNTY OF FLAGLER )

I HEREBY CERTIFY that on this 4 day of Dec., 2002, before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared William Harkins, the Incorporator of the Surf Club II & III Pool & Spa Association, Inc., and who executed the foregoing Articles of Incorporation; and he acknowledged before me that he executed the same for the purposes therein expressed. He is personally known to me and did not take an oath.

Karolyn N. Sheekey  
NOTARY PUBLIC

[SEAL]



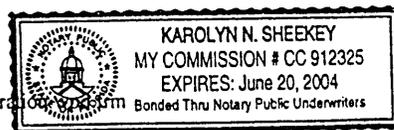
STATE OF FLORIDA )  
 ) SS:  
COUNTY OF FLAGLER )

I HEREBY CERTIFY that on this 4 day of December, 2002, before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared MICHAEL D. CHIUMENTO, to me known to be the person described as Initial Registered Agent of Surf Club II & III Pool & Spa Association, Inc., and who executed the foregoing acceptance; and he acknowledged before me that he executed the same for the purposes therein expressed.

Karolyn N. Sheekey  
NOTARY PUBLIC

[SEAL]

My Commission Expires:



**BY-LAWS  
OF  
SURF CLUB II & III POOL & SPA ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

**Section 1. Identification of Association**

These are the By-Laws of the Surf Club II & III Pool & Spa Association, Inc., hereinafter referred to as the "Association", as duly adopted by its Board of Directors. The Association is a corporation not for profit, organized pursuant to and under Chapter 617 of the Florida Statutes for the purpose of administering certain recreational facilities as described in the Articles of Incorporation and located in Flagler County, Florida.

1.1 The present office of the Association shall be located at 21 Old Kings Road North, Suite B101, Palm Coast, Florida 32137, and thereafter may be located at any place in the County designated by the Board of Directors of the Association.

1.2 The fiscal year of the Association shall be the calendar year, or as otherwise determined by the Board of Directors.

1.3 The seal of the Association shall bear the name of the Association, the word "Florida", and the words "Corporation Not For Profit".

**Section 2. Membership in the Association,  
Members' Meetings, Voting and Proxies**

2.1 The qualification of members, the manner of their admission to membership in the Association and the manner of the termination of such membership shall be as set forth in Article IV of the Articles.

2.2 The members shall meet annually at the office of the Association or such other place in the County on the first Monday of June, commencing with the year 2003; provided, however, that said date may be changed by resolution of the Board of Directors so long as the annual members meeting for any year shall be held not later than thirteen (13) months after the last preceding annual members meeting. The purpose of the annual members meeting shall be to hear reports of the officers, elect members of the Board of Directors (subject to the provisions of Article IX of the Articles) and to transact any other business authorized to be transacted by the members.

2.3 Special meetings of the members shall be held at any place within the County, whenever called by the President, a Vice President or a majority of the Board of Directors. A special meeting must be called by the President or a Vice President upon receipt of a written request from one-third (1/3) of the members. Special meetings shall be called by the President or a Vice President upon receipt of written notice from the Association of a meeting of the members thereof.

2.4 Written notice of any meeting (whether an annual members meeting or a special meeting of the members) shall be mailed to each member entitled to vote at his last known address as it appears on the books of the Association. Written notice of an annual members meeting shall be mailed to each member (in the manner required by the Act and any amendments thereto in effect at the time of mailing) not less than fourteen (14) days prior to the date of the annual members meeting. Written notice of a special meeting of the members shall be mailed not less than fourteen (14) days prior to the date of such special meeting. Proof of mailing shall be given by the affidavit of the person giving the notice. The notice shall state the time and place of such meeting and the object for which the meeting is called and shall be signed by the Secretary or acting Secretary of the Association. Notice of the annual members meeting shall be posted at a conspicuous place on the Association at least fourteen (14) continuous days prior to an annual members meeting. If a meeting of the members, whether a special meeting or an annual members meeting, is one which, by express provision of the Act, there is permitted or required a greater or lesser amount of time for the mailing or posting of notice than is required or permitted by the provisions of this Section 2.4, then the aforesaid express provision shall govern. Notice of any special meeting shall set forth the purpose of such special meeting. Notice of any meeting may be waived in writing by any member before, during or after a meeting.

2.5 The members may, at the discretion of the Board of Directors, act by written consent in lieu of a special meeting, provided written notice of the matter or matters to be voted upon is given to each member at the addresses and within the time periods set forth in Section 2.4 herein or duly waived in accordance with such Section. The decision of the majority of the members as to the matter or matters to be voted upon (as evidenced by written consent requested in the notice) shall be binding on the members. The notice shall set forth a time period during which time a response must be made by the members.

2.6 A quorum of the members shall consist of persons entitled to cast a majority of the votes of the entire membership and decisions shall be made by owners of a majority of the Members represented at a meeting at which a quorum is present. When a quorum is present at any meeting and the jurisdiction of such meeting is challenged, the holders of a majority of the vote present in person or by "Proxy", as hereinafter defined, shall decide the question. However, if the question is one which, by express provisions of the Act, requires a vote other than the majority vote of a quorum, then such express provision shall govern and control the required vote on such question.

2.7 If a meeting of the members cannot be held because a quorum is not in attendance, the members who are present, either in person or by Proxy, may adjourn the meeting from time to time until a quorum is present. If a meeting is adjourned because of the lack of a quorum, the notice provisions for the adjournment shall, subject to the Act, be as determined by the Board of Directors.

2.8 Minutes of all meetings of the members shall be kept in a businesslike manner and be available for inspection by the members and Directors at all reasonable times and upon reasonable notice. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting.

2.9 Voting rights of members shall be as stated in the Articles. Such votes may be cast in person, by Proxy or by "Voting Certificate." Proxy is defined to mean an instrument containing the appointment of a person who is substituted by a member to vote for him and in the members place and stead. Proxies shall be in writing and shall be valid only for the particular meeting designated therein and any adjournments thereof if so stated. A Proxy must set forth the name of the person voting by Proxy, his condominium unit number, the name of the person authorized to vote the Proxy for him, and the date the Proxy was given. A Proxy must be filed with the Secretary of the Association before the appointed time of the meeting in order to be effective. Any Proxy may be revoked prior to the time a vote is cast according to such Proxy.

2.10 At any time prior to a vote upon any matter at a meeting of the members any member may demand the use of a secret written ballot for voting on such matter. The Chairman of the meeting shall call for the nomination and election of Inspectors of Election to collect and tally written ballots upon the completion of balloting.

2.11 Cumulative voting shall not be permitted.

### **Section 3. Board of Directors; Director's Meetings**

3.1 The Association shall be administered by a Board of not less than three (3) Directors, subject to the increase as set forth in Article IX of the Articles.

3.2 The provisions of the Articles setting forth the selection, election, designation and removal of Directors are hereby incorporated herein by reference.

3.3 Subject to Section 3.5 below and to Declarant's rights as set forth in the Articles and as set forth in Section 3.5(c) below, vacancies in the Board of Directors shall be filled by persons appointed by the remaining Directors. Any such person shall be a Director and have all of the rights, privileges, duties and obligations as a Director elected at an Annual members meeting and shall serve for the term prescribed in Section 3.4 of these By-Laws.

3.4 The term of each Director shall extend until the next annual members meeting at which his term expires as provided in Article IX of the Articles, and until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided herein.

3.5 (a) A Director elected by the Members may be removed from office upon the affirmative vote or the agreement in writing of a majority of the Members at a special meeting of the Members with or without cause. A meeting of Members to so remove a Director elected by them shall be held, subject to the notice provisions of Section 2.4 hereof, upon the written request of ten percent (10%) of the Members. However, before any such Director is removed from office, he shall be notified in writing prior to the meeting at which a motion will be made to remove him that such a motion will be made, and such Director shall be given an opportunity to be heard at such meeting should he be present prior to the vote on his removal.

(b) Members shall elect, at a special meeting of the members or at an annual members meeting, persons to fill vacancies on the Board of Directors caused by the removal of a Director elected by Members in accordance with Section 3.5(a) above.

(c) A Director designated by Declarant, as provided in the Articles, may be removed only by Declarant in its sole discretion. Declarant shall have the right to name a successor for any Director removed by it or for any vacancy on the Board of Directors as to a Director designated by it and Declarant shall notify the Board of Directors of the name of the respective successor Director and the commencement date for the term of such successor Director.

3.6 The organizational meeting of the members of a newly elected Board of Directors shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected.

3.7 Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. Special meetings of the Board of Directors may be called at the discretion of the President or, in his absence, the Vice President of the Association. Special meetings must be called by the Secretary at the written request of one-third (1/3) of the Directors.

3.8 Notice of the time and place of regular and special meetings of the Board of Directors, or adjournments thereof, shall be given to each Director in person, telephone or telegraph at least three (3) business days prior to the day named for such meeting, or in the event notice is given by mail, five (5) business days prior to the day named for such meeting. Notice of a Board of Directors meeting shall be posted conspicuously on the Association's property forty-eight (48) continuous hours in advance of said meeting. Notice of any meeting where "Assessments" (as such term is hereinafter defined) are to be considered shall state that Assessments will be considered and the nature of such Assessments. Directors may waive notice of a meeting before, during or after a meeting, and such waiver shall be deemed equivalent to the receipt of notice by such Director.

3.9 A quorum of the Board of Directors shall consist of a majority of the Directors. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board of Directors, except as specifically otherwise provided in the Articles or elsewhere herein. If at any meeting of the Board of Directors there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present.

3.10 The presiding officer at Board meetings shall be the President.

3.11 Directors shall not receive any compensation for their services as Directors.

3.12 Minutes of all meetings of the Board of Directors shall be kept in a businesslike manner and be available for inspection by members and Directors at all reasonable times and upon

reasonable notice. The minutes shall be retained by the Association for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.13 The Board of Directors shall have the power to appoint an executive committee of the Board of Directors consisting of not less than a majority of the Directors, which shall have and exercise such powers of the Board of Directors as may be delegated to such executive committee by the Board of Directors. All acts of the executive committee shall be affirmed at the next meeting of the Board of Directors.

3.14 Meetings of the Board of Directors at which a quorum of the members is present shall be open to all Members. Any Member may tape record or videotape meetings of the Board of Directors. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The association may adopt written reasonable rules governing the frequency, duration, and manner of Member statements. Adequate notice of all meetings, which notice shall specifically incorporate an identification of agenda items, shall be posted conspicuously on the Association's property at least 48 continuous hours preceding the meeting except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next regular meeting of the board. However, written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding Members, will be considered shall be mailed or delivered to the Members and posted conspicuously on the Association's property not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the Members, the board shall by duly adopted rule designate a specific location on the association property upon which all notices of board meetings shall be posted. If there is no association property upon which notices can be posted, notices of board meetings shall be mailed or delivered at least 14 days before the meeting to each Member. Notice of any meeting in which regular assessments against Members are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the Members is inapplicable to meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, when the meeting is held for the purpose of seeking or rendering legal advice.

#### **Section 4. Powers and Duties of the Board of Directors**

The Board of Directors shall have the powers and duties necessary for the management and administration of the affairs of the Association. All powers and duties of the Association, including those existing under the Act, shall be exercised by the Board of Directors, unless otherwise

specifically delegated therein to the members. Such powers and duties of the Board of Directors shall be exercised in accordance with the provisions of the Act and shall include, but not be limited to, the following:

4.1 Making and collecting against members to pay the Common Expenses of the Association property. These Assessments shall be collected by the Association through payments made directly to it by the members.

4.2 Using the proceeds of Assessments in the exercise of the powers and duties of the Association and the Board of Directors.

4.3 Maintaining, repairing and operating the property owned by the Association.

4.4 Reconstructing improvements after casualties and losses and making further authorized improvements of Association Property.

4.5 Making and amending rules and regulations with respect to the operation and use of the property owned by the Association.

4.6 Enforcing by legal means the provisions of the Articles and these By-Laws, and any rules and regulations adopted by the Association and the applicable provisions of the Act.

4.7 To contract for the management and maintenance of the Association Property and to authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of any rules and regulations and maintenance, repair and replacement of Association property and other services with funds that shall be made available by the Association for such purposes and to terminate such contracts and authorizations. The Association and its officers shall, however, retain at all times the powers and duties granted by these documents and the Act including, but not limited to, the making of Assessments, promulgation of rules and regulations and execution of contracts on behalf of the Association.

4.8 Paying taxes and assessments which are or may become liens against the Association Property.

4.9 Purchasing and carrying insurance for the protection of Members and the Association against casualty and liability for the Association Property.

4.10 Paying costs of all power, water, sewer and other utility services rendered to the Association property.

4.11 Hiring and retaining such employees as it shall deem appropriate in its discretion to administer and carry out the services required for the proper administration of the affairs of the Association.

4.12 To acquire, own, mortgage and convey real and personal property and take such other reasonable actions in that regard.

4.13 Electing, designating, and removing officers in accordance with the terms and provisions of these Documents.

4.16 Maintaining bank accounts on behalf of the Association and designating signatories required therefore.

### **Section 5. Officers of the Association**

5.1 The officers of the Association shall be a President, who shall be a Director, one (1) or several Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors. Any officer may be removed without cause from office by a vote of the Directors at any meeting of the Board of Directors. The Board of Directors shall, from time to time, appoint such other officers and assistant officers and designate their powers and duties.

5.2 The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint such committees at such times from among the members as he may, in his discretion, determine appropriate to assist in conducting the affairs of the Association. The President shall preside at all meetings of the Board of Directors. The President shall also be the Voting Member of the Association or appoint by written proxy a person to be the Voting Member of the Association at meetings of the Owners' Association.

5.3 In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board of Directors. In the event there shall be more than one (1) Vice President elected by the Board of Directors, then they shall be designated "First", "Second", etc., and shall exercise the powers and perform the duties of the Presidency in such order and shall perform such other duties as shall be prescribed by the President and the Board of Directors.

5.4 The Secretary shall cause to be kept the minutes of all meetings of the Board of Directors and the members, which minutes shall be kept in a businesslike manner and shall be available for inspection by members and Directors at all reasonable times and upon reasonable notice. He shall have custody of the seal of the Association and shall affix the same to instruments requiring such seal when duly authorized and directed by the Board of Directors to do so. He shall keep the records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of an association as may be required by the Board of Directors or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary and perform such other duties as shall be prescribed by the President or the Board of Directors.

5.5 The Treasurer shall have custody of all of the property of the Association, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members, keep the books of the Association in accordance with good accounting practices and shall perform all of the duties incident to the office of a Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer whenever the Treasurer is absent and shall assist the Treasurer and perform such other duties as shall be prescribed by the President or the Board of Directors.

5.6 The compensation, if any, of employees of the Association shall be fixed by the Board of Directors. Officers shall not be compensated for their services as officers. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association nor contracting with a Director for the management of the Association Property of any property owned by the Association.

### **Section 6. Accounting Records; Fiscal Management**

6.1 The Association shall maintain accounting records in accordance with generally accepted accounting practices and on an accrual basis. The accounting records shall be open to inspection by members or their authorized representatives who shall be accountants at reasonable times and upon reasonable notice. Such authorization as a representative of a member must be in writing and be signed by the member giving such authorization and dated within sixty (60) days of the date of any such request. Written financial reports or statements of the Association shall be supplied at least annually, as set forth more fully in Section 6.2(f) below, to the members. The accounting records shall include (a) a record of all receipts and expenditures, including, as applicable, and not limited to, costs for security, professional management, taxes, refuse collection and utility services, lawn care, building maintenance and repair, insurance, administrative and salary expenses, and general, maintenance, and depreciation reserves; (b) an account Members which shall designate the name and address of the Members, the amount of each Assessment charged to the Members, the amounts and due dates for each Assessment, the amounts paid upon such account and the balance due; (c) an account indicating the Common Expenses allocated under the budget and the Common Expenses actually incurred during the course of the fiscal year.

6.2 (a) The Board of Directors shall adopt a budget of the Common Expenses of the Association (the "Budget") for each fiscal year at a regular or special meeting of the Board of Directors ("Budget Meeting") called for that purpose not later than November 15 of the prior year. In the event a Budget is not adopted by such date, it shall not abrogate or affect Members' obligations to pay Common Expenses. Prior to the Budget Meeting, a proposed Budget shall include, where applicable, but not be limited to, the following items of expense:

- (a) Costs for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;

- (f) Costs for maintenance and repair;
- (g) Insurance costs;
- (h) Administrative and salary expenses; and
- (i) Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.

Copies of the proposed Budget and notice of the exact time and place of the Budget Meeting shall be mailed to each member at the member's last known address, as reflected on the books and records of the Association, not less than fourteen (14) days prior to said Budget Meeting, and the Budget Meeting shall be open to the members. Failure to timely adopt a Budget shall not affect or abrogate the obligation to pay Common Expenses.

(d) The Board of Directors may also include in the proposed Budget an amount as a Common Expense Assessment for the making of betterments to the Association Property for anticipated expenses by the Association which are not anticipated to be incurred on a regular or annual basis or for the establishment of reserves for repair or replacement of the property owned by the Association either annually or from time to time as the Board of Directors shall determine the same to be necessary. Such amount may be levied upon the members by the Board of Directors as a Special Assessment and shall be considered an "Excluded Expense" under Section 6.3(a) hereof. In addition, the Board of Directors shall include, on an annual basis, the establishment of reserve accounts for capital expenditures and deferred maintenance of property owned by the Association. The reserve accounts shall include, but not be limited to, repair and replacement and painting. The amount to be reserved shall be computed by means of a formula which is based upon remaining useful life and estimated replacement cost of each reserve item. This amount shall also be considered an Excluded Expense under Section 6.3(a) hereof. The members may by a majority vote at a duly called meeting of the association determine for a particular fiscal year to budget no reserves or reserves in a lesser amount than required herein.

(e) In administering the finances of the Association, the following procedures shall govern: (i) there shall be apportioned between calendar years on a pro rata basis any expenses which are prepaid in any one calendar year for Expenses which cover more than such calendar year; (ii) Assessments shall be made monthly, unless otherwise determined by the Board of Directors, in amounts no less than are required to provide funds in advance for payment of all of the anticipated expenses and for all unpaid expenses previously incurred; and (iii) Common Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such Common Expenses is received. Assessments shall be sufficient to provide adequate and available funds to meet all budgeted expenses and anticipated cash needs in any calendar year.

(f) The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board of Directors in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be by checks signed only by such persons as are authorized by the Board of Directors; provided, however, that at least two (2) authorized signatures shall be on any check.

(g) A financial report for each year, including a statement of revenues and expenses of the Association shall be prepared by a Certified Public Accountant designated by the Board of Directors. Either a copy of such report or a complete set of financial statements shall be furnished to each member no later than the first day of April of the year following the year for which the report is made. The report or statements shall be deemed to be furnished to the member upon its delivery in person or mailing by prepaid, first-class mail to the member at his last known address shown on the books and records of the Association.

### **Section 7. Rules**

The Board of Directors at any meeting may adopt rules or amend or rescind existing rules for the operation and use of the property owned by the Association. Copies of rules promulgated, amended or rescinded shall be mailed to all Members at their last known address as shown on the books and records of the Association and shall not take effect until forty-eight (48) hours after such mailing.

### **Section 8. Enforcement Procedures**

(a) Enforcement Committee. The Association shall have the right to assess reasonable fines against a Member in the manner provided herein. Each Board of Directors shall have the power to create an "Enforcement Committee" to be comprised of three (3) members, one (1) of whom shall be designated as the Chairperson thereof. The Enforcement Committee shall serve a term consistent with the term of its Board. Members of the Enforcement Committee may be replaced with or without cause by majority vote of the Board.

(b) Conduct of Enforcement Hearing. The alleged non-complying member shall be given reasonable opportunity to be heard.

(c) Powers of the Enforcement Committee. The Enforcement Committee shall have the power to:

(i) Adopt rules for the conduct of its hearings to be approved by the Board of Directors;

(ii) Effectuate the provisions set forth in this provision;

(iii) Issue orders consistent with this provision; and

(iv) Order non-complying members to pay a fine not to exceed Fifty (\$50.00) Dollars, or such greater amount as may be permitted by the Act.

(d) Notice to Alleged Non-Complying members. Alleged non-complying members shall be given reasonable notice at least seven (7) days in advance of said hearing. No alleged non-complying member shall be given notice of hearing before the Enforcement Committee unless said

alleged non-complying member has first been given reasonable opportunity to rectify the alleged non-complying condition.

**Section 9. Internal Dispute Resolution**

Internal disputes arising from the operation of the Association, their agents, and assigns shall be subject to mandatory nonbinding arbitration of disputes upon the consent of the parties to such dispute.

The Association shall have no responsibility to settle disputes between members or intervene on behalf of any member regarding a dispute with another member.

**Section 10. Parliamentary Rules**

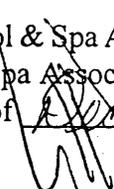
The then latest edition of Robert's Rules of Order shall govern the conduct of meetings of the Association; provided, however, if such Rules are in conflict with the Articles and these By-Laws, then the Articles and By-Laws, as the case may be, shall govern in the following order of priority: Articles, By-laws.

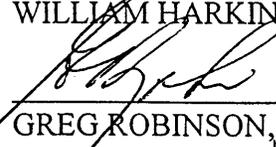
**Section 11. Amendment of the By-Laws**

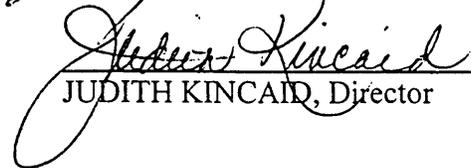
11.1 These By-Laws may be amended by the affirmative vote of not less than a majority of the members present at an annual members meeting or a special meeting of the members. A copy of the proposed amendment shall be sent to each member along with the notice of the special meeting of the members or annual members meeting.

11.2 Amendments to these By-Laws shall be made in accordance with the requirements of the Act and amendments thereto in effect at the time of amendment.

The foregoing By-Laws of Surf Club II & III Pool & Spa Association, Inc. are hereby adopted by all of the Directors of Surf Club II & III Pool & Spa Association, Inc. as and constituting the Board of Directors of said Association this 10 day of November, 2002.

  
\_\_\_\_\_  
WILLIAM HARKINS, Director

  
\_\_\_\_\_  
GREG ROBINSON, Director

  
\_\_\_\_\_  
JUDITH KINCAID, Director