

EXHIBITS

- A. Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens**
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"EXHIBITS A"

Declaration of Covenants, Conditions, Restrictions, Easements,
Charges and Liens

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**Declaration of Covenants, Conditions, Restrictions,
Easements, Charges and Liens**

for

The Funky Fish Houses at Cape Harbour

This Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for The Funky Fish Houses at Cape Harbour is made this 3rd day of April, 2009, by Realmark Homes, L.L.C., a Florida limited liability company (the "Declarant") for the limited purposes set forth herein.

WHEREAS, the Declarant is the owner of certain real property in Lee County, Florida, as described in Exhibit "A", which is attached hereto (the "Property"); and

WHEREAS, the Declarant intends to create within the Property a residential community consisting of nineteen (19) single family residences (the "Funky Fish Houses"); and

WHEREAS, the Declarant desires to subject the Property to this Declaration to provide a reasonable and flexible procedure for the overall development of the Funky Fish Houses and to establish a method for the administration, use and enjoyment of the lands subject to this Declaration; and

NOW THEREFORE, Declarant declares that the Property and any and all additional property which is hereinafter subjected to this Declaration, shall be held, transferred, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the covenants, conditions, restrictions, and easements set forth in this Declaration, which shall run with the Property and inure to the benefit of, and be enforceable by, each Owner and their successors in title. :

1. Definitions

- 1.1 Architectural Review Board or ARB shall mean the board or committee to be appointed by the Board of Directors with the powers and duties as set forth in Article 6 of this Declaration.

- 1.2 Architectural Guidelines shall mean the Architectural Guidelines and Review Procedures established by Declarant for the Community pursuant to Section 6.1 of this Declaration, which are attached as Exhibit "B" to this Declaration as may be amended from time to time.
- 1.3 Articles of Incorporation or Articles shall mean the Articles of Incorporation of the Association, as filed with the Secretary of State of the State of Florida, a copy of which is attached as Exhibit "C" hereto, as amended from time to time.
- 1.4 Assessments shall mean the Individual Assessments, Periodic Assessments and Special Assessments as described in this Declaration.
- 1.5 Association shall mean the Funky Fish Houses at Cape Harbour Homeowner's Association, Inc., a Florida not-for-profit corporation, its successors and assigns.
- 1.6 Board or Board of Directors shall mean the Board of Directors of the Association, in office from time to time.
- 1.7 Bylaws shall mean the Bylaws adopted by the Association, a copy of which is attached as Exhibit "D" hereto, as amended from time to time.
- 1.8 Common Area shall mean any real and personal property now or hereinafter owned by or dedicated to the Association for the common use and enjoyment of the Owners, together with any easements in favor of the Association for the benefit of all of the Owners.
- 1.9 Common Assessments shall mean and include actual and estimated expense of operating the Association including any reasonable reserve, all as may be imposed hereunder or found to be necessary and appropriate by the Board pursuant to this Declaration, the Articles of Incorporation and the By-Laws, and any amendments thereto.
- 1.10 Community shall mean Funky Fish Houses at Cape Harbour.
- 1.11 Declarant shall mean Realmark Homes, L.L.C., a Florida limited liability company, its successors and assigns.
- 1.12 Individual Assessments shall mean those certain assessments levied by the Association, as set forth in Section 5.6 herein.
- 1.13 Lot shall mean a portion of the Property, except the common area, as shown on the Site Plan, intended for residential use and ownership. The boundary, dimensions and

location of a Lot, as shown on the Site Plan may not coincide with the boundaries, dimensions and location of the similarly numbered Lot as shown on the Plat.

- 1.14 Master Association shall mean the META at Cape Harbour Community Association, Inc., a not-for-profit Florida corporation, and its successors, the homeowner's association established pursuant to the Master Declaration to administer and manage the Master Declaration Property.
- 1.15 Master Declaration shall mean the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for META at Cape Harbour, as recorded in Official Records, Book 3729 at Page 2018 in the Public Records of Lee County, Florida, as amended and all exhibits attached thereto.
- 1.16 Master Declaration Property shall mean the lands, leaseholds, easements, and all improvements on the lands leaseholds and easements including the Property, subject to this Declaration, that are subject to the Master Declaration from time to time, whether or not contiguous.
- 1.17 Member shall mean a person or entity entitled to membership in the Association as provided herein, as well as in the Articles of Incorporation and By-Laws of the Association. All Owners shall be Members of the Association.
- 1.18 Owner shall mean the record Owner, whether one or more persons or entities, of any Lot which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.
- 1.19 Periodic Assessments shall mean those certain assessments levied by the Association as set forth in Section 5.3 herein.
- 1.20 Plat shall mean the Plat filed for Waterfront at Cape Harbour recorded as Instrument Number 2008000125434 in the Public Records of Lee County, Florida, and any amendments thereto.
- 1.21 Property shall mean the real property described on Exhibit "A" attached hereto.
- 1.22 Residential Unit shall mean a Lot together with a constructed dwelling unit which is intended to be and may be used and occupied only as a single family residence.
- 1.23 Site Plan shall mean the site plan of the Community, which is attached as Exhibit "E" hereto. The boundaries, dimension and location of the Lots as shown on the Site Plan may not coincide with the boundaries, dimensions and location similarly numbers Lots as described on the Plat.

1.24 Special Assessments shall mean those certain assessments as set forth in Section 5.5 herein.

1.25 Turnover shall mean the date on which the Class A Members are entitled to elect a majority of the Board of Directors, as set forth in Section 3.6 of this Declaration.

2. Property Rights and Use of Common Area

2.1 General. Every Owner shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area, subject to any restrictions, limitations or provisions contained in this Declaration or any deed of conveyance to the Association. Such right and easement may be delegated to the Members of one's family and his or her tenants and invitees, subject to such regulations or procedures as may be adopted by the Board. The aforementioned right and easement of enjoyment shall be appurtenant to and shall pass with the title to every Lot subject to the following reservations, rights, and provisions:

2.1.1 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 or the Master Declaration Property, including without limitation, the amenity set forth in that certain Amenity License Agreement entered into by and between Realmark META, LLC and the Association for any period during which any Assessment of the Association 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.

2.1.2 The right of the Declarant or the Association, with the approval of the Declarant, to dedicate, transfer, or grant permits, licenses, and easements in and to the Common Area or portions thereof for utilities, roads, drainage, environmental issues and other purposes reasonably necessary or useful for the proper development, maintenance, or operation of the Community without first obtaining approval from the Owners. Notwithstanding anything within this Declaration to the contrary, the Association is prohibited from exercising the powers granted to it by this section in any manner that would, in the reasonable opinion of the Declarant, be directly or indirectly detrimental to sales, leasing or marketing efforts of the Declarant or any of its agents regarding Lots, or other properties within the Property or the Master Association Property.

2.1.3 The right of the Association to borrow money for the purpose of improving the Property or any portion thereof, acquiring additional Common Area, or repairing or improving any facility located or to be located on the Property, and to give as security for the payment of any such loan and mortgage

conveying all or any portion of the Common Area; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any and all rights, interests, options, easements, and privileges herein reserved.

- 2.1.4 The easement rights of the Declarant and its successors and assigns to enter and travel upon, over, and across the Common Area for the purpose of completion and repair of the improvements within the Property and for all reasonable purposes to further assist and enhance the marketing of the Property in general and Lots and Residential Units specifically located or to be located on the Property.
- 2.2 Owner's Right to Ingress, Egress. Every Owner shall have the right of ingress and egress over, upon, and across the Common Area necessary for access to his, her or its Lot. Such rights shall be appurtenant to and pass with the title to each Lot.
- 2.3 Easement of Encroachment. If any portion of an improvement constructed on the Common Area encroaches upon an adjoining Lot or any portion of an improvement constructed on a Lot encroaches upon the Common Area including, but limited to awnings and roof overhangs, as a result of construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.
- 2.4 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 thereto.
- 2.5 Acknowledgment of Rights of Use. Each Owner, by acceptance of a deed, is deemed to accept the reservations, rights of use, licenses, easements, and permits existing in, through, and over the Common Area.
- 2.6 Conveyance of Common Area. The Association covenants to accept title to all or any portions of the Common Area when offered by the Declarant.
- 2.7 Rules and Regulations. The Board may establish reasonable rules and regulations concerning the use of the Common Area and improvements located thereon. Such regulation shall be binding upon the Owners and users, their families, tenants, guests, invitees, and agents, until and unless such regulation, rule, or requirement is specifically overruled, canceled, or modified by the Board. The Board shall have the authority to impose reasonable monthly monetary fines, for so long as the violation(s) continues and other sanctions for violations of its rules, and monetary fines may be

collected by lien and foreclosure, as provided for herein for assessments. In addition, the Board shall have the right to suspend votes and the right to use the Common Area, other than as may be necessary to access one's Lot 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.

- 2.8. Construction and Sale Period. Despite any provisions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant or its designated builders to maintain and carry on upon such portion of the Property as the Declarant may deem necessary, including, but not limited to, the Common Area, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to construction, lease or sale, including, without limitation, business offices, signs, model homes, parking facilities and sales/leasing offices, so long as construction on or original offering for sale or lease of all or any portion of the Property, continues. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots and Residential Units owned or used by the Declarant or its designee as models and sales offices and to authorize sales and construction personnel to travel upon and enter the Common Area. Furthermore, Declarant reserves the right, during installation of any paving of streets, as shown on the Plat of portion of the Property to enter onto any Lot or Lots for the purpose of disposing of street excavation, including the removal of any trees, if necessary, whether or not the Lot or Lots have been conveyed to and/or contracted for or by any other Owner or Owners. **Each Owner by acceptance of a deed or other conveyance of their Lot, hereby acknowledges and agrees that construction related activities, which may produce unpredictable audible noises and odorous impacts are to be expected to occur upon the Property and Master Association Property.**

- 2.9. Marina and Mixed Use. Each Owner acknowledges that the Community is located directly adjacent to or in the close vicinity of a working marina, with associated noise, odors and boat traffic, as well as other development projects currently under construction or planned for future construction. Prior to the completion of such developments and subsequent to the completion of the Community, substantial marina-related and construction-related activities are to be expected which may cause noise, dust and other attendant inconveniences. Declarant or its designated builders shall take reasonable precautions to protect the Residential Units from damage during any periods of construction, including without limitation restricting pedestrian and vehicular access to the Lots and constructing scaffolding above the roadways, walkways and Residential Units during periods of construction. Further, the surrounding property contains retail, restaurant, and office establishments, which may be expanded. Each Owner understands and acknowledges that such commercial operations may generate an unpredictable amount of visible, audible, and odorous impacts and disturbances from activities relating to the operation of businesses. The

activities associated with the commercial operations include: (i) vehicular and residential traffic; (ii) commercial and retail operations; (iii) cooking and cleaning associated with restaurants and bars; (iv) music and noise associated with restaurants and bars; (v) after hours and weekend activities and entertainment; and (vi) special events such as fishing tournaments and boat shows open to the public. In addition, the owners and operators of commercial establishments have the right, in their sole discretion, to remove, relocate, discontinue operation of, or otherwise deal with their operations in their sole discretion without regard to any prior use of or benefit to any residents of the Community.

- 2.10 No Partition. Except as is permitted in this Declaration, there shall be no partition of any Lots, the Common Area or any part thereof, nor shall any person acquiring any interest in any of the Property 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 Subsection 2.10 does not prohibit the Board 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.
- 2.11 Easements for Utilities, Etc. There is hereby reserved to Declarant, without the consent of the Owners, the power to grant easements including 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, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, telephones, gas, cable television, and electricity. The Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property and the Master Declaration Property. Declarant reserves the easements and rights-of-way as shown on any Plat for the purpose of constructing, maintaining, and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, or any other utility Declarant determines to install in, across, and/or under the Property; provided, however, Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Neither Declarant nor any utility company using the easements referred to in this Declaration shall be liable for any damages done by them or their assigns, agents, employees, or servants to any fences, shrubbery, trees, flowers, or any other Property of an Owner situated on or in any Property covered by said easements.
- 2.12 Light and Air. The Master Declaration Property is not subject to any easements for light and view in favor of the Community, Lots or Residential Units. Owners should be aware that existing and future improvements in the Master Declaration Property may obstruct the view of the Residential Units and the natural light that would otherwise be cast on the Residential Unit.

- 2.13 High Rise and Mid-Rise Towers. Owners should be aware that the existing City of Cape Coral Planned Development Project Number 02-00800011 approval allows future improvements within the Master Declaration Property that may include residential building(s) with a maximum height of three hundred twenty (320) feet.
- 2.14 Side Easements. A three (3) foot set-back easement and right-of-way (the "Side Easement") is expressly reserved along the side lines of all Lots to permit: (i) the construction and maintenance by the Declarant, its successors and assigns, of any improvements within the Community; (ii) the installation and maintenance by appropriate utility companies of water, sewer, drainage, electric, telephone and other utility services for the Community; (iii) the maintenance by the Association of the Boardwalk and Seawalls; and (iv) the construction and maintenance by adjoining Owner(s) of their Residential Unit(s) on the adjoining Lot(s). Awnings and roof overhangs may extend up to one (1) foot within the Side Easement. Notwithstanding the foregoing Lots 1 and 19 are permitted to construct their Residential Unit up to the lot line on the easterly lot line of the respective Lot. Lots 1 and 19 within the Community shall have the benefit of the six (6) foot set-back easements granted to the Association in that certain Easement Agreement entered into by and between Realmark Cape Marina, LLC and the Association, recorded as Instrument Number _____ in the Public Records of Lee County, Florida.
- 2.15 Fire Lane Corridor(s). Certain Lot(s) may be subject to six (6) foot fire corridor restrictions, i.e. three (3) feet on each designated Lot, as shown on the Site Plan attached as Exhibit "E" hereto (the "Fire Corridor"). No equipment or other obstructions may be constructed, other than awnings or roof overhangs, within the Fire Corridor. Further, only such landscaping as may be approved by the Declarant or the ARB, as applicable, may be installed within the Fire Corridor.
- 2.16 Owner Easements. Owners may not grant easements on their Lots without written consent and approval of the Declarant or the Association. Notwithstanding the foregoing, Owners may be required to grant easements as required by the ARB to facilitate construction of Residential Units on adjoining Lots, if necessary.
- 2.17 Assignment of Declarant Rights. Declarant may assign its rights as Declarant to all or any portion of the Property to any party or parties who take title to all or any portion of such Property for the purpose of development and sale. Declarant, however, unless otherwise specifically assigned, shall, so long as it owns any interest in the community, retain all Class "B" votes despite any such transfer or assignment.
- 2.18 Boardwalk and Seawall Easements. Boardwalk and Seawall easements have been granted over the Property as set forth in the Declaration of Easement, recorded by separate instrument in the Public Records of Lee County, Florida, as follows: (i) a ten (10) foot pedestrian easement (the "Boardwalk Easement") in order to accommodate

pedestrian traffic over, through and across the boardwalk constructed or to be constructed within the Boardwalk Easement (the "Boardwalk"); and (ii) a twenty (25) foot maintenance and access easement (the "Seawall Easement") located on the rear side of the Lot(s). Pursuant to the Declaration of Easement, each Owner shall be responsible for the maintenance and repair of that portion of the Boardwalk and the Seawall, including but not limited to the seawall and all other improvements located within his Lot, without contribution from Declarant, the Association or other Owners.

2.19 Frontage Easement. A five (5) foot easement located adjacent to the front boundary of the Lot(s) (the "Frontage Easement") has been granted by Realmark Cape Marina, LLC, a Florida limited liability company in favor of the Association, as set forth in the Easement Agreement, recorded by separate instrument in the Public Records of Lee County, Florida, for the purpose of access to the Lot(s) and the placement, maintenance and repair of landscaping and utilities (the "Frontage Area Improvements").

2.20 Additional Easements. Notwithstanding anything contained herein, Declarant hereby reserves the right to grant additional easements from time to time without the consent of the Owners or the Association.

2.21 No Rights in Public Generally. The easements, restrictions, covenants and conditions created, reserved, granted and established in this Declaration do not, are not intended to, and/or shall not be construed to create any easements, rights or privileges in and for the benefit of the general public.

2.22 Warranty Limitation.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, DECLARANT DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, COURSE OF DEALING, CUSTOM AND PRACTICE, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF HABITABILITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE CONSTRUCTION OF RESIDENTIAL UNITS, THE SEAWALL, THE BOARDWALK AND THE COMMON AREA AND WITH RESPECT TO ANY PERSONAL PROPERTY. EACH OWNER ASSUMES ALL RISKS AND LIABILITIES IN CONNECTION WITH THE USE OF ANY OF THE AFOREMENTIONED PROPERTY. DECLARANT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE RESIDENTIAL UNITS, THE PROPERTY OR COMMON AREAS.

3. Association Membership and Voting Rights.

- 3.1 Membership. Subject to Subsection 3.2 of this Section 3, every person who is the record Owner of a fee interest in any Lot 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 of an obligation, and the giving of a security interest shall not terminate the Owner's membership.
- 3.2 Master Association. In addition to becoming Members of the Association, all Owners will become members of the Master Association, pursuant to Section 5.1 of the Master Declaration. Owners of Lots will have a membership interest in the Master Association. In accordance with Section 5.3 of the Master Declaration, each owner will be entitled to one vote in the Master Association, which vote will be cast in a block in the manner the president of the Association, may in the president's sole and reasonable discretion, deem appropriate, acting on behalf of all of the Owners; provided however, that if the Association, has voted to instruct the president on a particular issue, then the president will cast the aggregate votes of the Association on that issue in the same proportion (or as nearly possible) as the votes of the Owners. The president has the authority to call a special meeting of the Owners in order to obtain instructions as to the manner in which the president is to vote on a Master Association matter.
- 3.3 Multiple Owners. No Owner or Occupant whether one or more persons shall have more than one (1) membership per Residential Unit owned or occupied; provided, however, multiple use rights for multiple Owners may be authorized and regulated by the Board. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse.
- 3.4 Voting. For the purposes of voting, the Association shall be deemed to have two (2) types of Memberships; i.e., Class A Memberships, which shall include all Owners of Lots within the Community, with the exception of Class "B" Members, if any; and Class B Membership which is the Declarant and its designated successors and assigns.
- 3.4.1 Class A Members shall be entitled to one (1) vote for each Residential Unit owned by such Class A Member. The Class A Member's vote shall be cast in accordance with this Subsection 3.3 and the requirement of the Association's Articles and Bylaws.
- 3.4.2 The Class B Member shall be the Declarant, or any assignee, successor, designee or nominee of the Declarant, in whole or in part, to whom the Declarant has assigned all or part of its rights as a Class B Member. The Declarant shall have the same number of votes at any meeting in which votes are to be taken as is held by all other Class A Members plus one vote. Class B Membership shall terminate and be converted on a Lot basis to Class A Members when the Declarant no longer owns any Property in the Property for

sale in the ordinary course of business or on such earlier date as the Declarant may elect to terminate its Class B Membership.

- 3.5 Election of Board of Directors. Directors of the Association shall be elected at the annual meeting of the Members in the manner provided in the By-Laws. Directors may be removed and vacancies on the Board shall be filled in the manner provided in the By-Laws.
- 3.6 Control of Board by Declarant. The Declarant, as the Class B Member, shall have the right to designate or elect all of the Members of the Board of Directors, and the designated directors need not be Members of the Association (Class A Members) until three (3) months after ninety (90%) percent of the Lots in the Community have been conveyed to Members, other than the Declarant (referred to herein as "Turnover"). For purposes of this Section, the term Members, other than the Declarant, shall not include builders, contractors or others who purchase a Lot for the purpose of constructing improvements thereon for resale. Thereafter, the Declarant shall be entitled to designate one (1) director so long as Declarant owns one (1) or more Lots in the Community. The Declarant may waive its right to designate one or more directors, all as provided in the By-Laws.

4. Association Powers and Responsibilities

- 4.1 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. The Association shall maintain, operate, and preserve the Common Area for the good and benefit of the Community.
- 4.2 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 Community. Such personnel may be furnished or employed directly by the Association or by any person or entity with 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 Property or the enforcement of this Declaration. The Declarant and Association may, but shall not be required to, arrange as an Association expense with others to furnish cable television, and other common services.

- 4.3 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.
- 4.4 Power to Contract. The Association may, acting through its Board of Directors, contract with any other residential or commercial Association to provide services and/or perform services on behalf of such other Association.
- 4.5 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. Further, the Association shall have the right to levy fines on a monthly basis, for each month, or portion thereof, that the violation continues, for each violation of any of the Association Documents. The Board may levy a fine, up to \$100.00 per violation or higher amount as permitted by law, against a particular Owner. Each fine shall constitute an Individual Assessment against the Lot to which it relates.
- 4.6 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.
- 4.7 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the By-Laws, or its Articles of Incorporation and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.
- 4.8 Maintenance
- 4.8.1 Association Responsibility. The Association shall maintain and keep in good repair the Common Area, the Frontage Area Improvements and any offsite landscape improvements, pursuant to the Landscape License Agreement between Realmark Cape Marina, LLC and the Association. Without limitation of the foregoing, the Association shall be responsible for the maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, irrigation system, structures, lighting, conduits, plumbing, and wiring for the installation of utility services, and improvements situated within the Common Area and within the Lots. The Association shall also be responsible for the repair and maintenance of all landscaping, trees, shrubs, grass, sprinkler heads, walks, drives and parking areas (other than the

walkway or driveway of a Residential Unit) situated in the Common Area or upon a Lot. The Association shall also be responsible for maintenance of landscaping on all Lots on which a Residential Unit has been constructed, provided, however, that the Association shall not be responsible for the maintenance of any interior portion, including landscaping of any screened patio or porch, or any fenced or walled in area appurtenant to any Residential Unit. Notwithstanding the foregoing, the Association may contract with one or more independent contractors for the performance of any or all of such maintenance responsibilities.

4.8.1.1 **Maintenance Surcharge.** In recognition of the fact that the installation or construction of additional improvements and/or landscaping for any Residential Unit may increase the maintenance responsibilities of the Association, the Architectural Review Board, with the concurrence of the Board of Directors, may impose a monthly maintenance surcharge on the Residential Unit as a condition to its approval in such amount as the Architectural Review Board may deem reasonable and appropriate to offset the estimated additional cost of maintaining the improvements, mowing lawns and/or additional landscaping for which such approval is requested. Any surcharge so imposed shall be effective for so long as the improvements and/or landscaping for which they have been imposed remain in place, subject to annual review and reassessment at the request of either the Owner or the Board of Directors.

4.8.2 **Responsibility.** The maintenance responsibility of each Owner shall be as follows:

4.8.2.1 The maintenance of all Lots and Residential Units, unless specifically identified hereunder as being the responsibility of the Association, shall be the responsibility of the Owner of such Lot or Residential Unit.

4.8.2.2 Each and every Owner is strictly prohibited from improving, modifying or maintaining any Common Area or from performing any maintenance duties of the Association without the prior written consent of the Board of Directors.

4.8.2.3 While it is the responsibility of each Owner to maintain, replace and repair, at his own expense, his Residential Unit, together with that portion of the Seawall and Boardwalk situated within his Lot and all appurtenances to the Residential Unit, including without limitation the roof, air conditioner, sidewalk, porch enclosures, dock and driveway,

the overall appearance and condition of each Residential Unit, Seawall and Boardwalk has a direct effect upon the value of all other Residential Units within the Community. Each Owner shall, therefore, maintain his Residential Unit, Seawall and Boardwalk in a good, safe and presentable condition at all times. Failure to do so shall be grounds for the Association to perform the necessary work at the expense of the offending Owners and to secure payment as an Individual Assessment.

4.8.2.4 In the event the Board of Directors determines that any Owner has failed to discharge his or her or its responsibility or 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, his or her family, 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 their sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary and the cost thereof. The noticed party shall have fifteen (15) days within which to pay such amount claimed; or, complete said 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. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such person's sole cost and expense. If the Owner does not reimburse the Association for the actual cost of the work performed within thirty (30) days after written notice, then the Association shall have the right to file a claim of lien against the Lot to secure the reimbursement obligation hereunder, together with interest, attorney's fees and the cost of collection, which lien shall be effective upon the filing of a claim of lien in the Public Records of Lee County, and may be foreclosed in the same manner as a mortgage.

4.8.2.5 In the event a tropical storm or hurricane warning is issued, each and every Owner shall be responsible for taking the necessary precautions to protect his Watercraft, as defined in Section 7.3 herein. In order to secure Watercraft, each Owner may utilize their neighbors dock(s) to tie additional lines or any other means that may be prudent or necessary.

4.9 Insurance and Casualty or Liability Losses.

4.9.1 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 Area against loss or damage by fire or other hazards (including flood), and including extended coverage, vandalism, and malicious mischief. If available, 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 hazard. The Board shall also obtain a public liability policy applicable to the Common Area covering the Association, its officers, directors and members. Unless otherwise provided by the Board of Directors, the cost of all such insurance coverage, including the cost of premiums and any deductibles, 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 full replacement cost.

4.9.1.1 All policies shall be written with a company licensed to do business in Florida.

4.9.1.2 Exclusive authority to adjust losses under policies in force by the Association shall be vested in the Association's Board of directors.

4.9.1.3 In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, workmen's compensation insurance, if and to the extent necessary, and may obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds.

4.10 Damage and Destruction. Any damage or destruction to the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association and the Declarant shall decide after the casualty not to repair or reconstruct.

5. Assessments

5.1 Covenant To Pay. Each Owner of a Lot by accepting a deed, personally covenants to pay to the Association, Assessments as hereinafter provided. Notwithstanding anything herein to the contrary, Declarant shall have the option, in its sole discretion either to: (i) pay the Assessments on each Lot owned by Declarant; or (ii) as an alternative to paying Assessments on each Lot owned by Declarant, Declarant may elect to fund any resulting deficit in the Association's operating expenses not produced by Assessments receivable from Owners other than Declarant and any other income receivable by the Association. The deficit to be paid under option (iii), above,

shall be the difference between (a) actual operating expenses of the Association (exclusive of capital improvement costs and reserves) and (b) the sum of all monies receivable by the Association (including, without limitation, assessments, interest, late charges, fines and incidental income) and any surplus carried forward from the preceding year(s). Declarant may from time to time change the option under which Declarant is making payments to the Association by written notice to such effect to the Association. When all Lots within the Property are sold and conveyed to purchasers, neither the Declarant nor its affiliates shall have further liability of any kind to the Association for the payment of Assessments, deficits or contributions. Without limiting the generality of Article II, Section 11 hereof, the Declarant's rights under this Section may be assigned by it in whole or in part and on an exclusive or non-exclusive basis. For the purposes of securing the payment of such assessments, the Association shall have a continuing lien on each Lot, provided that such liens upon Lots shall be subordinate to a first mortgage to an institutional lender on a Lot which was made in good faith and for value and which was recorded prior to the Association's filing a claim of lien against the Lot. Each Assessment levied upon an Owner shall also constitute a personal obligation of that Owner and, except as otherwise provided herein, an obligation of his successors and assigns.

- 5.2 Purpose. The Assessments imposed pursuant to Section 5 shall be used exclusively for the operation of the Association and the operation, maintenance, restoration and improvement of the Common Area as provided in this Declaration and the Association's Articles and Bylaws, provided that said purpose shall be liberally construed to promote effectively the welfare, safety and recreational opportunities of the Owners.
- 5.3 Periodic Assessments. The Board shall fix the amount of the Periodic Assessments for each fiscal year of the Association (or part thereof if Assessments commence on other than the first day of such fiscal year) to be levied against each Owner subject to Assessment at least 30 days in advance of such period. The Board may provide in its sole discretion that the Periodic Assessments be payable either quarterly or monthly. The Periodic Assessments shall also include all costs and expenses arising under the Master Declaration, which Owners are obligated to pay and which are not assessed directly against each Owner.
- 5.4 Initial Capital Contribution. There shall be a one time capital contribution of two (2) times the monthly Periodic Assessment collected from each Owner that purchases a Lot from the Declarant. The initial Capital Contribution shall be paid to the Association at the time of conveyance. However, any homebuilder acquiring a Lot from the Declarant, as provided for above, shall not be required to pay an initial capital contribution on such Lot under any circumstances; provided that the homebuilder agrees to collect the initial capital contribution from any third party

purchaser at the time of the conveyance of the Lot or Residential Unit by the homebuilder to the third party purchaser.

- 5.5 Special Assessments. Special Assessments may at any time be levied by the Board upon all Owners subject to Periodic Assessments for the following described purposes and subject to the following conditions:
- 5.5.1 For restoration of the Common Area after casualty, in accordance with Section 4.9.
- 5.5.2 For capital improvements upon the Common Area (including appurtenant or related fixtures and personality) provided that any such assessment that is in the aggregate in excess of \$19,000.00 shall also require the vote or written consent of a majority of the Owners subject to such Assessment.
- 5.5.3 To make up deficits in operating and maintenance accounts resulting from inadequate or uncollectible Periodic Assessments.
- 5.6 Individual Assessment. An Individual Assessment may be levied against any Owner to reimburse the Association for any expense incurred by it as a result of maintenance, repairs, or replacements which were made or performed by it with respect to the Common Area and the Lots and which are caused or arose from the willful or negligent act or neglect of such Owner, his family, his guests or his invitees.
- 5.7 Share of Assessments. The Periodic Assessments provided for in Subsection 5.3 and the special assessments provided for in Subsection 5.5 shall be allocated to and assessed against each Lot in equal shares.
- 5.8 Non-Use. No Owner may exempt himself from personal liability for Assessments levied by the Association or release his Lot from the liens imposed hereby, by his failure to use the Common Area or abandonment of the Owner's Residential Unit.
- 5.9 Monetary Fines. The Board of Directors shall have the authority to impose reasonable monetary fines, including those set forth in Sections 4.5 herein, and other sanctions in the event of any violation of this Declaration or the Rules and Regulations adopted hereunder. All monetary fines assessed against an Owner shall be considered an Individual Assessment and shall become a lien against the Lot owned by such Owner, which may be foreclosed or otherwise collected in the same manner as a lien for Periodic Assessments and Special Assessments, as provided herein.
- 5.10 Interest. Periodic, Special and Individual Assessments that are unpaid for more than ten days after the date they are due shall bear interest at the highest lawful rate (now 18% per annum) from the due date until paid. The Board in its discretion may waive

the interest where it determines that circumstances warrant waiver. Such waiver in any given instance shall not affect the right of the Board to require payment of interest in any other instance.

5.11 Enforcement of Lien.

5.11.1 The Association will have a lien against each Lot for any unpaid Assessments and for interest, which lien will also secure any late charges, enforcement of such lien (including those incurred in all bankruptcy and probate proceedings), whether or not legal proceedings are initiated, reasonable attorney's fees incurred by the Association or its agent incident to the collection of an unpaid Periodic, Special or Individual assessments or the enforcement of any lien provided for herein (including attorneys' fees in connection with any review of a judicial or administrative proceeding by appeal or otherwise), together with all sums advanced and paid by the Association or its agent for costs, taxes and payments on account of superior liens or encumbrances which may be required to be advanced by the Association or its agent in order to preserve and protect its lien, shall be payable by the Owner liable for the Assessment and secured by said lien.

5.11.2 In addition, the Owner of any Lot with respect to which an Assessment is overdue by more than thirty (30) days may be required by the Board to pay the Association a late charge of \$25.00 or 5% of the amount of the delinquent instalment, whichever is greater.

5.11.3 The Association may bring an action in its name to foreclose any lien on a Lot in the manner in which mortgages of real property are foreclosed in Florida and may also bring an action to recover a money judgment for unpaid Periodic, Special or Individual Assessments, without waiving any claim of lien, provided that in either case the Association must give the delinquent Owner at least thirty (30) days' written notice of its intentions, and in case of a foreclosure, must file in the Public Records of Lee County, Florida, a claim of lien. Upon the timely curing of any default (including the payment of fees and costs secured by the Association's lien) for which a claim of lien was filed, the Owner curing the default is entitled to have a satisfaction of lien recorded upon payment to the Association of a reasonable fee to be determined by the Association.

5.11.4 No institutional lender that acquires title to a Lot as a result of a foreclosure of a bona fide first mortgage of record thereon or that accepts a deed to a Lot in lieu of foreclosure of a bona fide first mortgage of record thereon shall be liable for the share of Periodic, Special or Individual Assessments pertaining to the Lot or chargeable to the former Owner thereof which became due prior

to its acquisition of title, other than as set forth in Chapter 720 of the Florida Statutes. Any such shares of Assessment for which the new Owner is not liable shall be collectible by Periodic or Special Assessments from all the Owners, including the new Owner of the Lot in question. Except as expressly provided herein, every grantee in a voluntary conveyance of a Lot shall be jointly and severally liable for all unpaid Periodic, Special or Individual Assessments against the grantor for his share of the Assessments including purchasers at a judicial sale. Grantee shall be liable for all Periodic, Special or Individual Assessments coming due while he, she or it is the Owner of a Lot regardless of how title was acquired.

5.11.5 The remedies provided in this Section 5 shall be cumulative and not mutually exclusive.

- 5.12 Association's Certificate. Each Owner of a Lot and every holder of a mortgage thereon shall have the right to require from the Association a certificate showing the amount of unpaid Periodic, Special or Individual Assessments against the Owner with respect to his Lot upon payment to the Association of a reasonable fee not exceeding \$25.00. Any other person other than the Owner of the Lot in question who relies upon such certificate shall be protected thereby.

6. Architectural Review and Control.

- 6.1 Required Approval. So long as Declarant, its, affiliates, its successors or assigns, own any portion of the Master Declaration Property, Declarant shall have the right to review and approval all improvements to be constructed upon the Property, or any alterations thereto, including without limitation any boat dockage on or appurtenant to any Lot, based upon the Architectural Guidelines and Review Procedures established by Declarant for the Community (the "Architectural Guidelines"). The Architectural Guidelines are attached as Exhibit "B" to this Declaration. Declarant reserves the right to revise the Architectural Guidelines for the Community from time to time so long as Declarant owns any portion of the Master Declaration Property. At such time as Declarant no longer owns any portion of the real property within the Master Declaration Property, the Architectural Review Board ("ARB") of the Association shall have the right to review and approve all improvements to be constructed upon the Property, or any alterations thereto, and to revise the Architectural Guidelines from time to time.
- 6.2 New Construction or Alteration. No Residential Unit or other structure or buildings or any site construction, and no modifications, additions or alterations to existing structures, including without limitation any boat dockage facility, on or appurtenant to any Lot, shall commence or be erected until a complete set of the plans, specifications and working drawings for the proposed improvements (collectively, the "Plans") shall

have been submitted and approved in writing by Declarant or the ARB, as applicable, in accordance with the procedures set forth in the Architectural Guidelines.

- 6.2.1 Approval or disapproval by the Declarant or by the ARB shall only be evidenced by a written instrument executed by an authorized officer of the Declarant or by at least one (1) member of the ARB, as applicable, provided, however, that should the Declarant or the ARB fail to act upon any submission to it within thirty (30) days from the receipt thereof by the Declarant or by the ARB, such inaction shall be deemed approval of the submission.
 - 6.2.2 The Declarant or the ARB, as applicable, may impose conditions on its approval of any Plans submitted, and may require submission of additional plans, specifications, working drawings or other information prior to approving or disapproving the Plans submitted.
 - 6.2.3 The Declarant or the ARB, as applicable, may require such details to be submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the Declarant and the ARB, as applicable, of all required plans and specifications, the Declarant or the ARB may postpone review of any plans submitted for approval.
 - 6.2.4 The Declarant or the ARB, as applicable, may adopt a reasonable schedule of fees to be paid for by the person making the submittal for the processing of requests and for reviewing subsequent compliance inspections by the Declarant or the ARB, as applicable, for approval of improvements. Such fees, if any, shall be payable to the Declarant or the ARB at the time the application for approval is submitted to the Declarant or the ARB for approval.
 - 6.2.5 All expenditures of the ARB are subject to the prior written approval of the Board of Directors.
 - 6.2.6 The construction, improvement or alteration of any boat dock is subject to local, state and federal land use regulations. Declarant makes no guarantees, representations or warranties relating to any Owner's ability to obtain any such permits or approvals, and no Owner shall rely upon any guarantees, representations or warranties from the Declarant, its employees or agents.
- 6.3 Right to Inspect. Any authorized officer of the Declarant, and any member of the ARB, as applicable, or their representative shall have the right, during reasonable hours and after reasonable notice, to enter upon any of the Property under construction to inspect for the purposes of ascertaining whether construction is proceeding or was accomplished in accordance with the approvals granted by the Declarant or the ARB,

as applicable. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

6.4 Variances. The Declarant or the ARB, as applicable, may authorize variances from compliance with any of the Architectural Guidelines and their procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the denial of any permit, or disapproval of the terms of any financing shall not necessarily be considered a hardship warranting a variance.

6.5 Limitation of Liability. The Declarant and the ARB, as applicable, shall use their sole and absolute judgment in approving or disapproving all Plans submitted to it. Neither the Declarant, the ARB, nor any individual member thereof, shall be liable to any person for any official act of the Declarant or the ARB, as applicable, in connection with submitted Plans. Approval by the Declarant or the ARB, as applicable, does not necessarily assure approval by the appropriate governmental authority. Notwithstanding that the Declarant or the ARB, as applicable, has approved the Plans, neither the Declarant, the ARB nor any of its members shall be responsible or liable in any way to any Owner, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval or failure to approve. Neither the Declarant, the ARB or any agent thereof, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration nor for any structural or other defects in any work done according to the Plans submitted to and approved by the Declarant or the ARB, as applicable.

6.6 Removal of Non-Conforming Improvements. The Association, upon request of the Declarant or the ARB, as applicable, and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these covenants, and the Owner thereof shall forthwith reimburse the Association for all expenses incurred in connection therewith.

7. General Restrictions

7.1 Antenna. No aerial, antenna, satellite dish or other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind shall be placed or erected upon any Lot or affixed in any manner to the exterior of any Residential Unit except: (i) as may be provided by the Declarant for the benefit and use of the Community; (ii) if such apparatus is completely contained within the Residential Unit

located upon a Lot, so as not to be visible from outside the Residential Unit; (iii) if such apparatus is otherwise approved by the Declarant or by ARB, as applicable, in writing; (iv) that one such apparatus measuring no more than twenty-four (24) inches in diameter may be placed on the exterior of a Residential Unit in the best location that allows for reception yet maximum aesthetic compatibility with the surrounding environment. If an Owner elects to avail himself to section (iv) herein, the Owner may be required to paint the apparatus to match the exterior paint color of the Residential Unit if such painting does not void any warranty of the apparatus. In addition the Declarant or the ARB, as applicable, may adopt rules requiring plants to be placed around the apparatus or some other means of obscuring the apparatus from the view of other Owners.

- 7.2 Motor Vehicles. All vehicles, including passenger automobiles, vans, trucks, commercial vehicles, boat trailers, campers, motor homes, trailers, motorcycles or other non-passenger motor vehicles shall be placed, parked, or stored within the ground floor under a Residential Unit.
- 7.3 Watercraft. Boats, jet-skis, wave runners, or other watercraft of any kind ("Watercraft") shall be permitted only when properly docked or stored in a closed garage. However, under no circumstances shall any Watercraft, including attachments and appurtenances thereto, exceed fifty (50) feet in length, as further described in the Dock Layout Plan to the Architectural Guidelines, nor shall any Watercraft be permitted to be docked within the Community in such a manner as to extend into, or otherwise interfere with boat traffic within the channel to the Cape Harbour marina. Notwithstanding the foregoing, there are certain Lots within the Community that cannot accommodate a fifty (50) foot Watercraft as shown on the Dock Layout Plan. Further, Lots 1, 18 and 19, as shown on the Site Plan, are required to either have: (i) a side boat lift; or (ii) no boat lift and no pilings for boat moorage. Notwithstanding the foregoing, pilings may be allowed on: (i) Lots 18 and 19 for construction of a deck protruding no more than seventeen (17) feet from the seawall; and Lot 1 for construction of a deck, which may extend no further than the Boardwalk and Seawall Basement and no part of such deck may encroach into the Spreader Waterway, as shown on the Dock Layout Plan, subject to architectural approval as required by Section 6.1 above.
- 7.4 Abandoned, Inoperable and Oversized Vehicles. Abandoned or inoperable automobiles or oversized vehicles of any kind shall not be stored or parked on any portion of the Property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of ten (10) days or longer; provided, however, this shall not include vehicles parked in an enclosed garage or operable vehicles left on the Property by Owners while on vacation. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner.

"Oversized" vehicles, for purposes of this Section, shall be vehicles which are too high to clear the entrance to a residential garage.

- 7.5 Parking. No vehicle shall be parked anywhere but on paved areas intended for that purpose, garages, or as approved by the Association for construction purposes. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.
- 7.6 Annoying Lights, Sounds, or Odors. No light, sound or odor shall be emitted from any Residential Unit which is obnoxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices or lights, other than devices used exclusively for security, fire prevention or fire control purposes, shall be permitted.
- 7.7 Trees and landscaping. No tree, shrub or landscaping improvement shall be cut down or otherwise destroyed without the prior express written consent of the Declarant or the ARB, as applicable.
- 7.8 Artificial Vegetation. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot unless approved by the Declarant or the ARB, as applicable.
- 7.9 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on a Lot or behind a screened area to be approved by the Declarant or the ARB, as applicable.
- 7.10 Landscaping. All shrubs, trees, grass, and planting of every kind shall be kept well maintained, properly cultivated, and free of trash and other unsightly material.
- 7.11 Service, Screening, Storage Areas. Garbage and refuse shall be placed in suitable containers which shall be concealed and contained within buildings or shall be concealed by means of a screening wall or materials similar to and compatible with that of the building or shall be concealed by sufficient landscaping to provide a permanent screen at all times of the year.

- 7.12 Storage Tanks. No above ground storage tanks, including but not limited to, those used for storage of water, gasoline, oil, propane or other liquid or gas shall be permitted on the Lot outside of the building.
- 7.13 Hazardous Materials. Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, the "Hazardous Materials"). No Owner or his tenants, guests, invitees, licensees or permittees shall knowingly use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about his or her Residential Unit any Hazardous Materials except in compliance with the Environmental Laws.
- 7.14 Signs. No commercial signs of any kind including "For Rent" or "For Sale" may be erected on any Lot without written approval of the Declarant or the ARB, as applicable, or as may be required by legal proceedings.
- 7.15 Outside Lighting. Except as may be initially installed or approved by Declarant, no spotlights, floodlights, or similar type high intensity lighting shall be placed or utilized upon any Unit which in any way will allow light to be reflected on any other Residential Unit or the improvements thereon without the written authorization of the Declarant or the ARB, as applicable.
- 7.16 Exterior Materials and Colors. The Declarant or the ARB, as applicable, shall have the sole right to approve or disapprove all exterior materials and colors and may make such decisions on purely aesthetic grounds, based solely on its own judgment.
- 7.17 Nuisances. All parts of the Residential Unit or Lot shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage will be allowed to accumulate nor any fire hazard allowed to exist. No unsightly growth shall be permitted to grow or remain upon any Lot or Residential Unit, and no refuse pile or other unsightly object shall be allowed to be placed or remain anywhere thereon. All Common Areas shall be kept free for their intended use, and must in no event be used as storage areas, either on a temporary or permanent basis. In the event any Owner shall fail or refuse after a thirty (30) day notice mailed to his last known address to keep his Lot or Residential Unit free of such unsightly growths or objects, then the Association may enter upon said Lot and remove same at the expense of the Owner and such entries shall not be deemed a trespass. Said expense shall be added to and become part of the assessment to which said Lot is subject. Further, no Owner may make or cause to be made any noises, or use musical instruments, radios, televisions, amplifiers, or other such equipment in a manner that may tend to disturb other Owners. No Owner may

permit any use of its Residential Unit or Lot that will increase the cost of insurance on the Property. This sub-section, 7.16 does not apply to Declarant with respect to its ordinary operation maintenance or management of the Property.

- 7.18 Correction of Health and Safety Hazards. Any conditions which are deemed by the Association to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Association (although under no duty to do so), and the cost thereof shall be charged to the responsible Owner.
- 7.19 Mineral Exploration. The Property shall not be used in any manner to explore for or use commercially any water or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other such substances located in or under the ground.
- 7.20 Building Exterior. All windows, porches, balconies, and exteriors of all buildings on any Lot shall at all times be maintained in a neat and orderly manner.
- 7.21 Filling of Lots. No Lot shall be altered in size by filling or excavating. No fill may be placed on or removed from any Lot without the prior approval of the Declarant or the ARB, as applicable.
- 7.22 Fences. No fences shall be permitted on any Lot, unless approved by the Declarant or the ARB, as applicable.
- 7.23 Flags. Notwithstanding anything to the contrary herein, an Owner may display one portable, removable United States flag in a respectful way, regardless of any Declaration rules or other requirements dealing with flags or decorations.
- 7.24 Timeshare Estates. The Community shall not contain timeshare estates or timeshare licenses.

8. Use Restrictions.

- 8.1 Declaration and Master Declaration. All Owners, their guests, invitees and lessees shall be bound by this Declaration and the Master Declaration, including without limitation the Use Restrictions set forth in Section 11 of the Master Declaration.
- 8.2 Personal Residential Use Restriction. Use of all Residential Units and the facilities of the Association is limited to the personal residential use of Owners, their guests, invitees and lessees and for residential uses by corporations and other entities owning such Residential Units. Use of Residential Units of the facilities of the Association by Owners for commercial purposes or any purposes other than the personal use described in this Declaration is expressly prohibited. "Commercial Purpose" includes any use by an Owner that the Board, in its discretion, could reasonably conclude

constitutes a commercial enterprise or practice; provided however, that "commercial purpose" does not include rental or leasing of a Residential Unit to a residential tenant. The provisions of this Section 7.1 do not apply to the Declarant. Notwithstanding the foregoing, rental of the Residential Units for periods of less than one (1) week shall not be considered to be a use other than single family use.

- 8.3 Declarant Use. Declarant and its designated builder(s) may make such use of a Residential Unit, Lot or Property as may facilitate the sale or lease of Residential Units or interest in other property developed by Declarant or its affiliates, including, but not limited to showing a Lot or Residential Unit, maintaining model units and the display of signs or other promotional devices.

- 8.4 Leases. Residential Units may be leased or rented pursuant to the following terms and conditions:

8.4.1 Any and all lease or rental agreements must be in writing and contain a provision stating that the tenant agrees to be bound by the terms of this Declaration. In the event of any violation of the Declaration by the tenant, the Association shall have the right to pursue such rights and remedies as it may have under Chapter 720 of the Florida Statutes and the Declaration directly against the tenant. The Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Area resulting from acts or omissions of tenants (as determined in the sole discretion of the Board) and to pay any claim for injury or damage caused by the negligence of the tenant and an Individual Assessment may be levied against the Owner's Lot for such injury or damage. All leases are made subordinate to any lien filed by the Association, whether prior or subsequent to such lease. Notwithstanding the foregoing, under no circumstances shall any Owner be permitted to lease or rent any dock separate from his respective Lot or Residential Unit.

- 8.5 Annoyance or Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance to the neighborhood. The display or shooting of firearms, fireworks, or firecrackers is expressly forbidden.

- 8.6 Temporary or Accessory Structures. Subject to Declarant's reserved rights herein, no structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, or other outbuilding shall be maintained or used on any Lot at any time as a residence or for any other purpose, either temporarily or permanently. Any structure on which construction has commenced must be completed within a reasonable length of time.

- 8.7 Pets. Only domestic pets are allowed to be kept on any Lot. Examples of non-domestic pets include: horses, cows, hogs, poultry, and livestock of any kind. Should pets become a nuisance in the opinion of the Declarant or Board, they must be removed from the Community. All Owners shall be responsible for picking up and appropriately discarding any pet waste.
- 8.8 Drainage. Drainage of Lots, streets or curb and gutter system will not be impaired by any person or persons.
- 8.9 Insurance Rates. Nothing shall be done or kept in any Residential Unit, or the Common Area which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in any Residential Unit or on the Common Area which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.
- 8.10 No Implied Waiver. The failure of Declarant or the Association to object to an Owner's failure to comply with the covenants or restrictions contained herein, in the By-laws, or in any rules now or hereafter promulgated shall in no event be deemed a waiver of the provisions of such documents.
- 8.11 Rules. The Association, through the Board, shall have the right to promulgate and impose rules and thereafter to modify, alter, amend, rescind and augment any of the same with respect to the use, operation and enjoyment of all or a portion of the Property, and any improvements located on the Property (including, but not limited to, establishing reasonable fees for the use of facilities and establishing hours and manner of operation for Common Area).
- 8.12 Lawful Use. No immoral, improper, offensive or unlawful use may be made of the Residential Unit or Lot, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction must be observed. The person who is responsible for satisfying the requirements of governmental authorities for maintenance, modification or repair of the Property, a Lot or Residential Unit will be the same party responsible for the maintenance and repair of the property concerned.

9. Enforcement.

- 9.1 Generally. The provisions of this Declaration shall be enforceable by any proceeding at law or in equity by the Declarant, the Association or by any Owner.
- 9.2 Association's Rights and Powers. The Association through its Board has the power to enforce all covenants, conditions, restrictions and agreements applicable to the Property and the Board is authorized to promulgate and enforce rules and regulations

governing the use of the Common Area. The Association may bring an action to enforce such rules and regulations by injunction, by damages, and by the levying and collection of fines against any Owner.

- 9.3 Declarant's Rights and Powers. Except as otherwise limited by law, for so long as the Declarant owns a Lot or any portion of the Property for development or sale, the Declarant reserves unto itself, the right and the power to enforce the covenants, conditions, restrictions and other provisions of this Declaration and to amend this Declaration from time to time. No amendment not agreed to by the Declarant shall be effective to diminish or alter the Declarant's rights, powers and privileges, as long as the Declarant holds any Lot or land for future development, for sale in the ordinary course of business, or holds the Property or any portion thereof, unless the Declarant shall so consent in writing. Declarant may delegate or assign, either exclusively or non-exclusively, any or all of its rights, powers, duties or privileges hereunder to the Association, or to an Owner, or to one or more third persons or entities. Upon the assumption by the Association of all the Declarant's rights hereunder, the Association shall be responsible for all of the duties and rights which the Declarant previously had hereunder.
- 9.4 Declarant's Inaction. Neither the execution or recordation of this Declaration nor the creation of any Association or other entity, nor the recordation of any other instrument subjecting any land in the community to protective covenants, conditions, restrictions or other provisions shall obligate or require the Declarant: (i) to grant any right, power, duty or privilege of any nature or kind to the Association or to any other entity; or (ii) to require the Declarant, the Association or any other entity to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do.
- 9.5 Attorney's Fees and Costs. In the event of any litigation arising under this Declaration, the Articles or Bylaws, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred at trial or appellate proceedings. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, expert witness fees, administrative costs and all other charges billed by the attorney to the prevailing party. The reasonable attorney's fees and costs incurred by the Association or the Declarant in any action against an Owner to enforce any provision of this Declaration, shall be a personal obligation of such Owner which shall be paid by such Owner, and any amount thereof which remains due and unpaid shall be a continuing lien upon such Owner's Lot, collectible in the manner provided above.

10. General Provisions

- 10.1 Coverage and Term. The covenants and restrictions of this Declaration shall run with and bind the Property, 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 Property 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 (60) days before the commencement of any such ten (10) year period, these covenants are extinguished by a written instrument executed by the Members holding at least seventy-five (75%) percent of the Class A votes if then in effect.
- 10.2 Amendment. Subject to the Water Management provisions, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing two-thirds (2/3) or more of the total voting power of the Association authorized to vote on amendments, plus the consent of the Declarant if then still a Class B Member. Any amendment must be recorded among the real property Public Records of Lee County, Florida. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.
- 10.3 Annexation and Withdrawal.
- 10.1.1 Annexation. Prior to Turnover, the Declarant may cause additional lands to be made part of this Declaration. Lands to be annexed may or may not be adjacent to the Community. Annexation shall be accomplished by an Amendment to the Declaration and recorded in the Public Records of Lee County, Florida. After Turnover, additional lands may be annexed into this Declaration with the approval of at least two-thirds (2/3) of the Board and two-thirds (2/3) of all Members of the Association.
- 10.1.2 Withdrawal. Prior to Turnover, the Declarant may withdraw any of the lands from the effect of this Declaration by the recording of an Amendment to this Declaration in the Public Records of Lee County, Florida. The Declarant may not withdraw any Lot or Residential Unit that has been conveyed to an Owner unless the right is reserved in the instrument of conveyance or the written consent of the Owner is obtained. After Turnover, there shall be no right to withdraw lands from the effect of this Declaration.
- 10.4 Severability. The invalidity of any provision of this Declaration shall not affect the enforceability of the remaining provisions of this Declaration or any part hereof. In the event that any provision of this Declaration shall be declared invalid by a court of

competent jurisdiction, then such provision shall be construed, to the extent possible, in a manner which would render the provision valid and enforceable or, if the provision cannot reasonably be construed in a manner which would render the provision valid and enforceable, then this Declaration shall be construed as if such provision had not been inserted.

- 10.5. Incorporation by Reference. All dedications, limitations, restrictions, and reservations shown on any subdivision Plat 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 by or on behalf of Declarant and, thereafter, each successive Owner, conveying any of the Property, whether specifically referred to therein or not.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 3rd day of April, 2009.

DECLARANT:
REALMARK HOMES, LLC
a Florida limited liability company

By: [Signature]
Will Stout, Manager

[Signature]
Witness Aileen Gibbs
[Signature]
Witness JANE Kirkman

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Will Stout, as Manager of Realmark Homes, L.L.C., a Florida limited liability company, who is personally known to me or who has produced _____ as identification and who did not take an oath.

(Notary Seal)

My Commission Expires: 08/20/2011

[Signature]
Signature of Notary Public



Prepared by:
Julie M. Drake
Bolaños Truxton, PA
12800 University Drive, Suite 350
Fort Myers, Florida 33907
(239) 437-5421

**First Amendment to the Declaration of Covenants,
Conditions, Restrictions,
Easements, Charges and Liens**

for

The Funky Fish Houses at Cape Harbour

This First Amendment to the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for The Funky Fish Houses at Cape Harbour ("First Amendment") is made this 17th day of June, 2010, by Realmark Homes, L.L.C., a Florida limited liability company (the "Declarant") for the limited purposes set forth herein.

The Declarant executed that certain Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for The Funky Fish Houses at Cape Harbour as recorded as Instrument Number 2009000098432 in the Public Records of Lee County, Florida (the "Declaration"), which encumbers the Property, as described therein.

Declarant is the owner of all of the Property, as defined in the Declaration.

Declarant desires to amend the Declaration pursuant to the authority reserved to Declarant under Section 10.2 of the Declaration.

NOW, THEREFORE, Declarant hereby declares the following:

1. Preliminary Statement. The Preliminary Statement is true and correct and, by this reference, is incorporated into and made part of this First Amendment. All terms that are not specifically defined in this First Amendment shall have the meanings given to them in the Declaration.
2. Lot Combination. Section 2.23 is hereby added to the Declaration, as follows:

With the approval of Declarant, an Owner may combine two (2) or more contiguous Lots and construct one (1) dwelling unit upon the combined lots (the "Combined

Lot"). The interior of a Combined Lot shall not be subject to the any Side Easements, as described in Section 2.14 of the Declaration.

3. Side Easements. The last sentence of Section 2.14 shall be amended and restated to read, as follows:

Lots 1 and 19 within the Community shall have the benefit of the six (6) foot set-back easements granted to the Association in that certain Easement Agreement entered into by and between Realmark Cape Marina, LLC and the Association, recorded as Instrument Number 2009000098429 in the Public Records of Lee County, Florida.

4. Multiple Owners. Section 3.3 is hereby amended to delete "Residential Unit" from the first sentence and add the word "Lot" in its place, so that the first sentence shall read, as follows:

No Owner or Occupant, whether or more than one persons, shall have more than one (1) membership per Lot owned or occupied; provided, however, multiple use rights for multiple Owners may be authorized and regulated by the Board.

5. Voting. Section 3.4.1 is hereby amended as follows:

- (a) The first sentence is amended and restated to read, as follows: Class A Members shall be entitled to one (1) vote for each Lot owned by such Class A Member.

- (b) The following sentence is hereby added after the first sentence: In the event that an Owner is the Owner of a Combined Lot, such Owner shall be responsible for Assessments for each Lot within the Combined Lot.

6. Covenant to Pay. Section 5.1 is hereby amended to add the following sentence after the first sentence:

In the event that an Owner is the Owner of a Combined Lot, such Owner shall be responsible for Assessments for each Lot within the Combined Lot.

7. Watercraft. Section 7.3 is hereby amended and restated in its entirety to read, as follows:

Boats, jet-skis, wave runners, or other watercraft of any kind ("Watercraft") shall be permitted only when properly docked or stored in a closed garage. However, under no circumstances shall any Watercraft, including attachments and appurtenances thereto, exceed fifty-five (55) feet in length, as further described in the Dock Layout Plan to the Architectural Guidelines, nor shall any Watercraft be permitted to be docked

within the Community in such a manner as to extend into, or otherwise interfere with boat traffic within the channel to the Cape Harbour marina. Notwithstanding the foregoing, there are certain Lots within the Community that cannot accommodate a fifty-five (55) foot Watercraft as shown on the Dock Layout Plan. Further, Lots 1, 18 and 19, as shown on the Site Plan, are required to either have; (i) a side boat lift; or (ii) no boat lift and no pilings for boat moorage. Notwithstanding the foregoing, pilings may be allowed on: (i) Lots 18 and 19 for construction of a deck protruding no more than seventeen (17) feet from the seawall; and (ii) Lot 1 for construction of a deck; which in all instances may extend no further than the Boardwalk and Seawall Easement and no part of such deck may encroach into the Spreader Waterway, as shown on the Dock Layout Plan, subject to architectural approval as required by Section 6.1 above. An Owner may be permitted to dock a Watercraft in excess of fifty-five (55) feet laterally, so long as the Owner is the record Owner of a Combined Lot and the Watercraft, together with attachments and appurtenances thereto, does not extend beyond a line parallel to the boundary of his Combined Lot. Watercraft placed on a lift are subject to the same length limitations stated above. The approved typical lift design should accommodate lifted Watercraft of approximately up to thirty-eight (38) feet. Owners desiring to lift longer or larger Watercraft should contact the designated dock contractor to determine whether an altered boat lift can accommodate their Watercraft.

8. Leases. Section 8.4.1 is hereby amended by deleting the last sentence of the paragraph, such that an Owner may lease or rent dock space separate and apart from his Lot or Residential Unit.
9. Architectural Guidelines. Section IV(D)Building Height of the Architectural Guidelines, which are incorporated into the Declaration as Exhibit "B", is hereby amended to read, as follows: 4 Story maximum as measured from the streetside of the building.
10. Dock Layout Plan. The Dock Layout Plan, which is attached as Exhibit "B" to the Architectural Guidelines is hereby replaced with the Dock layout Plan attached as Exhibit "A" attached hereto.
11. Ratification. Except as amended hereby, all other terms and provisions of the Declaration shall remain in full force and effect. In the event of any inconsistency between the terms of the Declaration and this First Amendment, the terms of this First Amendment shall control.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 21
day of June, 2010.

DECLARANT:
REALMARK HOMES, LLC
a Florida limited liability company

Witness Craig A. Dennden
GREG STROUT
Witness GREG S. TROUTON

By: Will Stout
Will Stout, Manager

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 21 day of June, 2010, by
Will Stout, as Manager of Realmark Homes, L.L.C., a Florida limited liability company, who is personally
known to me or who has produced N/A as identification and who did not take an oath.

(Notary Seal)

GREG STROUT
Signature of Notary Public

My Commission Expires:

P:\DOCS\Realmark Group (628)\Watersfront at Cape Harbour (160)\FBI Document.mwd.doc.doc



"EXHIBITS B"

Articles of Incorporation



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of THE FUNKY FISH HOUSES AT CAPE HARBOUR HOMEOWNER'S ASSOCIATION, INC., a Florida corporation, filed on April 9, 2009, as shown by the records of this office.

The document number of this corporation is N09000003549.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Tenth day of April, 2009



CR2EO22 (01-07)


Kurt S. Browning
Secretary of State

ARTICLES OF INCORPORATION
FOR
THE FUNKY FISH HOUSES AT CAPE HARBOUR
HOMEOWNER'S ASSOCIATION
(A Corporation Not-for-Profit)

FILED
9 APR -9 AM 9:26
CLERK OF DISTRICT COURT
JACKSONVILLE, FLORIDA

The undersigned hereby associate themselves for the purpose of forming a corporation not-for-profit under Chapter 617, Florida Statutes, and certify as follows:

ARTICLE I
NAME

The name of the corporation is: THE FUNKY FISH HOUSES AT CAPE HARBOUR HOMEOWNER'S ASSOCIATION, INC., hereinafter referred to as the "Association." The mailing address for the Association is 5789 Cape Harbour Drive, Suite 201, Cape Coral, Florida 33914.

ARTICLE II
PURPOSES

The purposes of the Association are:

1. To provide for maintenance, preservation, control and operation of the Common Areas within The Funky Fish Houses at Cape Harbour, located in Lee County, Florida (the "Community"), and such other property as may be added thereto, as set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for The Funky Fish Houses at Cape Harbour, as recorded in the Public Records of Lee County, Florida (the "Declaration"). All terms used herein which are defined in the Declaration shall have the same meaning as set forth in the Declaration, unless otherwise indicated herein.
2. To otherwise promote the health, safety, and welfare of its Members and their property within the Community.

ARTICLE III
POWERS

1. GENERAL POWERS. The Association shall have all the powers of a corporation not-for-profit which are not prohibited by law or in conflict with the provisions of these Articles or the Declaration.
2. NECESSARY POWERS. The Association shall have all of the powers reasonably necessary to implement its purposes, including, but not limited to, the following:

- A. To exercise all the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration;
- B. To acquire, construct, reconstruct, improve, maintain, repair, replace, operate, convey or otherwise deal with the property and improvements of every nature or kind constituting the Common Areas;
- C. To fix, establish, levy and collect assessments as contemplated by the Declaration;
- D. To operate, without pecuniary profit, for the benefit of its Members in accordance with the Declaration;
- E. To pay all taxes and other assessments which are liens against the Association or the Common Areas;
- F. To make and enforce reasonable rules and regulations governing the use and operation of the property covered by the Declaration;
- G. To sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person;
- H. To contract for services necessary to operate and maintain the Common Areas.

ARTICLE IV

PROHIBITION AGAINST ISSUANCE OF STOCK AND DISTRIBUTION OF INCOME

The Association shall never have nor issue any shares of stock, nor shall the Association distribute any part of its income, if any, to its Members, Directors or Officers. All monies and title to all properties acquired by the Association and the proceeds thereof shall be held only for the benefit of the Members in accordance with the provision of these Articles and with the Bylaws of the Association. Nothing herein, however, shall be construed to prohibit the Association for conferring benefits upon its Members or from making any payments or distributions to Members of monies or properties permitted by Chapter 617, Florida Statutes, or a statute of similar import. The Association may, however, reimburse its Directors, Officers and Members for expenses authorized and approved by the Board of Directors and incurred for and on behalf of the Association but shall not pay a salary to its Directors, Officers and Members for services rendered to the Association.

ARTICLE V MEMBERSHIP

Every Owner, including the Declarant, so long as they own a Lot within the Community, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment by the Association, pursuant to the Declaration. Members' rights, powers, duties and privileges shall be as set forth in these Articles, Bylaws, Declaration of Covenants, Conditions, Restrictions and Easements for The Funky Fish Houses at Cape Harbour, and any amendments thereto.

ARTICLE VI VOTING

For all matters for which the vote of the Members are required, each Member shall be entitled to vote as follows:

- A. Class A Members shall be entitled to one (1) vote for each Residential Unit owned by such Class A Member. The Class A Member's vote shall be cast in accordance with Subsection 3.3 of the Declaration and the requirement of the Association's Articles and Bylaws. Voting rights may be exercised by a Member or the Members' spouse, subject to provisions of the Declaration and the Bylaws. In any situation where more than one person holds an interest in a Lot, the vote for the respective Lot shall be exercised by any such person; provided, however, the persons holding the interest in the Lot may notify the Secretary of the Association, in writing, prior to or during any meeting of the manner in which the vote for the Lot is to be exercised, and in the absence of such notice, the Lot's vote shall be suspended if more than one person seeks to exercise it. The voting rights of a Member that is a corporation, partnership or other entity shall be exercised by the individual designated from time to time by the owner in a written instrument provided to the Secretary, subject to the laws of the State of Florida.
- B. The Class B Member shall be the Declarant, or any assignee, successor, designee or nominee of the Declarant, in whole or in part, to whom the Declarant has assigned all or part of its rights as a Class B Member. The Declarant shall have the same number of votes at any meeting in which votes are to be taken as is held by all other Class A Members plus one vote. Class B Membership shall terminate and be converted on a Lot basis to Class A Members when the Declarant no longer owns any Property in the Property for sale in the ordinary course of business or on such earlier date as the Declarant may elect to terminate its Class B Membership.

ARTICLE VII
ADDITIONS OF PROPERTIES AND MEMBERSHIP

Declarant may, so long as it owns property in the Community and in accordance with the Declaration, add land to the Property and increase the number of Members.

ARTICLE VIII
BOARD OF DIRECTORS

The initial Board of Directors shall consist of three (3) Directors appointed by Declarant. The names and addresses of the initial Directors are:

<u>Director</u>	<u>Address</u>
1. Jane Kirkman	5789 Cape Harbour Drive, Suite 201 Cape Coral, Florida 33914
2. Craig A. Dearden	5789 Cape Harbour Drive, Suite 201 Cape Coral, Florida 33914
3. Julie Peterson	5789 Cape Harbour Drive, Suite 201 Cape Coral, Florida 33914

Until three (3) months after conveyance by Declarant to Members, other than the Declarant of ninety (90%) percent of the Lots within the Property ("Turnover"), Declarant shall be entitled to elect all Members of the Board of Directors of the Association. After Turnover, Declarant shall be entitled to elect at least one (1) Member of the Board of Directors, so long as Declarant holds for sale in the ordinary course of business at least one (1) Lot within the Community.

The number of Directors may be either increased or decreased from time to time by the Bylaws but shall never be less than three (3) or more than five (5).

ARTICLE IX
OFFICERS

The Board of Directors may elect Officers from among its Members. The Officers of the Association shall be the President, Vice President, a Secretary/Treasurer, and such other Officers and Assistant Officers as may be decided upon and elected by the Board of Directors. The same person may hold two or more offices. The term of each office shall be one (1) year or until their successors are elected or appointed as provided in the Bylaws. The initial Officers of the Association who are to serve until their successors are elected or appointed as provided in the Bylaws are as follows:

President Craig Dearden

Vice President Jane Kirkman

Secretary/Treasurer Julie Peterson

ARTICLE X **INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Every Director and every Officer of the Association shall be indemnified by the Association against all expenses and liability, including attorneys' fees reasonably incurred by or imposed upon him or her in connection with any proceeding to which he or she may be a party, or in which he or she may become involved, by reason of this being or having been a Director or Officer of the Association, whether or not he or she is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board of Directors approves such settlement and reimbursement as being in the interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XI **BYLAWS**

The Bylaws of the Association shall be adopted by a majority vote of the Directors. Thereafter, the Bylaws may be altered, amended or rescinded only in the manner provided for in the Bylaws. Such alteration, amendment or rescission of the Bylaws may not be adopted and shall not become effective without the prior written consent of Declarant for as long as it is a Member.

ARTICLE XII **TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED**

In the absence of fraud, no contract or other transaction between the Association and any other person, firm, association, corporation or partnership shall be affected or invalidated by the fact that any Director or Officer of the Association is pecuniarily or otherwise interested in such contract or other transactions, or in any way connected with any person, firm, association, corporation or partnership which is pecuniarily or otherwise interested therein. Any Director may vote and be counted in determining the existence of a quorum at any meeting of the Board of Directors of the Association for the purpose of authorizing such contract or

transaction with like force and effect as if he or she were not so interested, or were not a Director, Member or Officer of such firm, association, corporation or partnership.

ARTICLE XIII **AMENDMENT**

These Articles of Incorporation may be amended from time to time by resolution adopted by a majority of the Board of Directors and approved by Members holding two-third (2/3) of the voting rights, subject to the following restrictions:

1. So long as Declarant is a Member, each amendment of these Articles must be first approved in writing by the Declarant.
2. No amendment of these Articles shall be effective which impairs or dilutes any right or title of a Member vested in it under a deed or other recorded instrument applicable to the Parcel owned by such Member unless made in accordance with provisions of such deed of instrument.
3. No amendment shall conflict with the Declaration.

ARTICLE XIV **TERMS OF EXISTENCE**

The Association shall have perpetual existence.

ARTICLE XV **INCORPORATOR**

The name and address of the incorporator of the Association is:

NAME	ADDRESS
Gregg S. Truxton	Bolaños Truxton, PA 12800 University Drive, Suite 350 Fort Myers, Florida 33907

ARTICLE XVI **REGISTERED AGENT AND REGISTERED OFFICE**

The initial registered agent for this corporation shall be Bolaños Truxton, P.A., and the registered office shall be located at 12800 University Drive, Suite 350, Fort Myers, Florida 33907. The Board of Directors shall have the right to designate subsequent resident agents without amending these Articles.

IN WITNESS WHEREOF, the incorporator has executed these Articles of Incorporation, this 31 day of March, 2009.



Gregg S. Truxton

STATE OF FLORIDA
COUNTY OF LEE

The foregoing Articles of Incorporation of THE FUNKY FISH HOUSES AT CAPE HARBOUR HOMEOWNER'S ASSOCIATION INC., was acknowledged before me this 31st day of March, 2009, by Gregg S. Truxton, who is personally known to me, and who did not take an oath.

SEAL



Susanne M. Moyer
Commission # DD518987
Expires February 25, 2010
Notary Public, State of Florida, No. 000335-0003

Susanne M. Moyer
Signature of Notary

Susanne M. Moyer
Name of Notary Printed

DD 518987
Serial Number, Commission
Number (if any) Printed

**CERTIFICATE DESIGNATING PLACE OF BUSINESS
OR DOMICILE FOR THE SERVICE OF PROCESS WITHIN THE
STATE, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

In pursuance of Chapter 48.091, Florida Statutes, the following is submitted, in compliance with said Act:

First, that The Funky Fish Houses at Cape Harbour Homeowner's Association, Inc., desiring to organize under the laws of the State of Florida with its initial registered office, as indicated in the Articles of Incorporation, at Fort Myers, Lee County, State of Florida, has named Bolaños Truxton, PA, located at 12800 University Drive, Suite 350, Fort Myers, Florida 33907, as its agent to accept service of process within the State.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above styled corporation, at place designated in this certificate, I hereby accept to act in this capacity, and agree to comply with the provision of said Act relative to keeping open said office.

Bolaños Truxton, P.A.

By: _____

Gregg S. Truxton

P:\DOCS\Realmark Group (R28)\Waterfront at Cape Harbour (160)\F&I Docs 2.1\2009\Articles of Incorporation revised 3.25.09.doc

FILED
69 APR -9 AM 8:26
CLERK OF CIRCUIT COURT
FORT MYERS, FLORIDA

"EXHIBITS C"

Bylaws

**BYLAWS
OF
THE FUNKY FISH HOUSES AT CAPE HARBOUR HOMEOWNER'S
ASSOCIATION, INC.,**

**ARTICLE I
NAME AND LOCATION**

Section 1. The name of this corporation is THE FUNKY FISH HOUSES AT CAPE HARBOUR HOMEOWNER'S ASSOCIATION, INC. (hereinafter the "Association").

Section 2. The principal place of business of the Association shall be located in Cape Coral, Florida or such other place as the Board of Directors may from time to time determine.

**ARTICLE II
INCORPORATION**

The Association was duly incorporated upon the filing of the Articles of Incorporation of the Association in the office of the Secretary of State of the State of Florida on the ____ day of February, 2009.

**ARTICLE III
DEFINITIONS**

The definitions and terms defined and used in the Declaration of Covenants, Conditions, Restrictions and Easements for THE FUNKY FISH HOUSES AT CAPE HARBOUR HOMEOWNER'S ASSOCIATION, INC., as recorded in the public records of Lee County, Florida (the "Declaration") shall apply to these Bylaws.

**ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner, including the Declarant, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot or Residential Unit which is subject to Assessment by the Association. Members' rights, powers, duties and privileges shall be as set forth in these Bylaws, Articles of Incorporation, Declaration of Covenants, Conditions, Restrictions and Easements for The Funky Fish Houses at Cape Harbour Homeowner's Association, Inc. and any Amendment thereto.

Section 2. Voting Rights may be exercised by a Member, subject to the provisions of the

Declaration, the Articles of Incorporation and these Bylaws. In any situation where more than one person holds an interest in a Lot or Residential Unit, the vote for the respective Lot or Residential Unit shall be exercised by any such person; provided, however, the persons holding the interest in the Lot or Residential Unit may notice the Secretary of the Association, in writing, prior to or during any meeting of the manner in which the vote is to be exercised, and in the absence of such notice, the Voting Rights attributable to the Lot or Residential Unit shall be suspended if more than one person seeks to exercise it. The Voting Rights of a Member that is a corporation, partnership or other entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the laws of the State of Florida.

Section 3. The interest of any Member in any part of the funds or assets of the Association cannot be conveyed, assigned, mortgaged, hypothecated or transferred in any manner except as an appurtenance to the Lot or Residential Unit owned by it.

Section 4. The term "Voter" shall mean and refer to (i) the Owner of a Lot or Residential Unit if such Lot or Residential Unit is owned by one individual, (ii) if the Lot or Residential Unit is owned by an entity other than an individual, any individual designated in a Certificate filed with the Secretary of the Association by the Owner, designating a voting Member for such Lot or Residential Unit, or (iii) a duly designated proxy holder. Anything to the contrary herein notwithstanding, there shall only be one Voter for each Lot or Residential Unit.

ARTICLE V

MEETINGS OF VOTING MEMBERS

Section 1. The annual meeting of the Members shall be held at such time and date as determined by the Board of Directors, to be held at the principal office of the Association or at such other place in Lee County, Florida as may be set forth in the notice of said meeting. If the date fixed for the annual meeting is a legal holiday, said meeting shall be held on the next succeeding business day thereafter. At such meeting the Members shall elect directors to serve until the next annual meeting of the Members or until their successors shall be duly elected and qualified and may conduct such other business as may be authorized to be transacted by the Members.

Section 2. Special meetings of the Members shall be held at such place, day and hour as may be set forth in the notice of said meeting and may be called by the President, or in his or her absence by the Vice President, or by a majority of the Board of Directors, or by Members representing at least 30% of the Voting Rights. The business conducted at such special meeting shall be limited to that stated in the notice of meeting.

Section 3. Notice of the annual Members' meeting stating the place, day, and hour of the meeting shall be given by the President, Vice President, or Secretary. Such notice shall be given to each Member not less than fourteen (14) days, nor more than sixty (60) days prior to the date set forth such meeting, which notice shall be mailed (by first class mail if

mailed more than 30 days before the meeting) or presented personally, receipt for such notice shall be signed by the Member, indicating the date on which such notice was received by it, or if such signature is refused, the date certified in any affidavit signed by the Secretary and filed in the records of the Association as the date of personal service. If mailed, such notice shall be deemed properly delivered when deposited in the United States mail, addressed to the Member at its post office address as it appears on the records of the Association, with postage thereon prepaid. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any Member may, by a written statement signed by such Member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of proper notice to such Member. The date on which notice of the annual Members' meeting is mailed (or personally delivered) shall be the record date for determining which Members are entitled to receive notice of, and to vote at, the annual Members' meeting. This determination of Members shall apply to any adjournment thereof, unless the Board of Directors fixes a new record date for the adjourned meeting.

Section 4. The President, or in his or her absence the Vice President, shall preside at all annual or special meetings of the membership. In the absence of both persons, the Board of Directors shall select a chairperson.

Section 5. A quorum for Members' meetings shall consist of not less than a majority of the total Voting Rights in the Property, represented in person or by proxy. The acts approved by the affirmative consent of a majority of the Voting Rights present at a meeting at which a quorum is present shall constitute the acts of the Members, except where approval by a greater number of Members is required by the Declaration, the Articles of Incorporation, these Bylaws, or Florida law. After a quorum has been established at a Members' meeting, the subsequent withdrawal of a Voter, so as to reduce the number of Voting Rights at the meeting below the number required for a quorum, shall not affect the validity of any action taken at the meeting or any adjournment thereof.

The execution by any Member of a copy of the minutes shall constitute the presence of such Member for the purpose of determining a quorum and for the further purpose of validating all of the actions taken at such meeting, unless otherwise prohibited under Florida law.

Section 6. Votes may be cast in person or by proxy. All proxies shall be in writing and shall be filed with the Secretary no later than twenty-four (24) hours prior to the time of the meeting and entered of record in the minutes of said meeting. No proxy shall be valid unless the same specifically sets forth the name of the Member voting by proxy, the name of the person authorized to vote the proxy, the number of Voting Rights to which the proxy applies, and the date the proxy was given, and is executed by all Owners of the subject Lot or Residential Unit. If the proxy is a limited proxy it shall set forth those items that the holder of the proxy may vote and the manner in which the vote is to be cast. If a proxy expressly provides, any proxy holder may appoint, in writing, a substitute to act in his or her place; a substitution is not authorized if such provision is not made.

Each proxy shall contain the date, time and place of the meeting for which the proxy is given, and shall be valid only for that meeting and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than permitted by Section 617.0721, *Florida Statutes*. Each proxy shall be revocable at any time at the pleasure of the Owner(s) executing it; however, in order for such revocation to be effective, written notice thereof shall be given to the Secretary of the Association.

Section 7. Annual or special meetings of the Members may be held at any time or place without notice with the written consent of all Voters, and may be held at any time or place without notice in an emergency situation.

Section 8. The order of business at all meetings of the Members of the Association, where applicable, shall be as follows:

- a. Election of chairperson of the meetings, if required.
- b. Call of the roll and certifying of a quorum.
- c. Proof of notice of meeting or waiver of notice.
- d. Reading or waiver of reading of any unapproved minutes.
- e. Reports or waiver of reports of officers.
- f. Reports or waiver of reports of committees.
- g. Election or waiver of inspectors of election.
- h. Election of directors.
- i. Unfinished business.
- j. New business.
- k. Adjournment.

Section 9. Any statutory right to waive notice of a Members' meeting or to take action without a meeting shall be permitted under these Bylaws.

ARTICLE VI

DIRECTORS

Section 1. The business affairs of the Association shall be managed by a Board of Directors (sometimes referred to herein as the "Board") who shall be elected by the Member(s). Said Board of Directors shall consist of at least three (3) and not more than five (5) persons of legal age (individual herein a "Director" and when referred to more than one the "Directors").

Section 2. The original Members of the Board of Directors shall be those persons set forth in the Articles of Incorporation. Directors shall be elected annually by the Members at the annual Member's meeting, and such Directors shall serve until their successors are duly elected and qualified, or until they are removed in the manner elsewhere provided, or until they resign, whichever first occurs.

The election shall be by a plurality of the votes cast, each person voting being entitled to cast his vote for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

Section 3. In the event of a vacancy occurring in the Board of Directors, for any reason whatsoever, a special meeting shall be called of the Members to fill the vacancy for the unexpired portion of the term of the former Director.

Section 4. A Director may be removed from office, with or without cause, at any time by the affirmative vote of a majority of the Members.

Section 5. No compensation shall be paid to Directors for their services as Directors. Compensation may be paid to a Director in his or her capacity as an officer or employee or for other services rendered to the Association outside of his or her duties as a Director. In this case, however, said compensation must be approved in advance by the Board of Directors and the Director to receive said compensation shall not be permitted to vote on said compensation. The Directors shall have the right to set and pay all salaries or compensation to be paid to officers, employees, agents or attorneys for services rendered to the Association.

Section 6. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting provided that a majority of the whole Board shall be present.

Section 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 the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone, or facsimile, at least ten (10) days prior to the day named for such meeting. The Directors may establish a schedule of regular meetings and no notice shall be required to be given to Directors as to such regular meetings once said schedule has been adopted and delivered to all Directors.

Section 8. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director, given personally or by mail, telephone or facsimile, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice upon the written request of at least two (2) Members of the Board of Directors.

Section 9. Before, at, or after any meeting of the Board of Directors, said Directors may, in writing, waive notice of said meeting and such waiver shall be deemed equivalent to the giving of proper notice. Attendance by a Director at any meeting of the Board shall be a waiver of any lack of notice thereof.

Section 10. At all meetings of the Board of Directors, a majority of the Board of Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors, except where approval by a greater number of Directors is required by the Declaration, the Articles of Incorporation, or these Bylaws. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present shall be able to adjourn the meeting from time to time. The President of the Association, or in his or her absence the Vice President, or, in the absence of both, any Director designated by the Directors, shall act as Chairperson of the Board of Directors. The Chairperson shall be entitled to vote as a Member of the Board of Directors on all questions arising before the Board of Directors.

Section 11. All meetings of the Board of Directors shall be open to all Members, except for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege.

Section 12. The order of business at a Directors' meeting, if applicable shall be:

- a. Election of Chairman of the meeting, if required.
- b. Calling of the roll.
- c. Proof of due notice of meeting.
- d. Reading or waiver of reading and disposal of any unapproved minutes.
- e. Reports or waiver of reports of officers and committees.
- f. Election of officers.
- g. Unfinished business.
- h. New business.
- i. Adjournment.

Section 13. All of the powers and duties of the Association existing under the Declaration, the Articles of Incorporation and these Bylaws shall be exercised exclusively by the Board of Directors or its managing agents, subject only to approval by Members of the Association when such is specifically required. The Board of Directors shall have all the powers vested under common law and under Chapter 617 and 607 (to the extent applicable), Florida Statutes, together with any powers granted to it pursuant to the terms of these Bylaws, the Articles of Incorporation of the Association, and the Declaration. Such powers shall include but not be limited to the power:

- a. To manage, operate, and administer this Association and its interests.
- b. To make and collect Assessments for Members for the purposes of carrying out the Association's obligations and duties, pursuant to, and subject to, the Declaration.
- c. To maintain, construct, improve, repair and replace the Association's property and interests, or the property for which the Association has such responsibility.

d. To hire and dismiss any personnel regarding the maintenance, operation, and administration of the Association's property and interests, or the property for which the Association has such responsibility.

e. To make, amend, and publish rules and regulations respecting the use of the property operated, maintained, administered, and/or owned or leased by the Association, and establish and impose penalties and sanctions for any infractions thereof.

f. To carry and pay the premium for such insurance as may be required for the protection of the Association and the Members thereof against any casualty or any liability.

g. To employ a management firm at a compensation established by the Board of Directors and to delegate to such management firm such powers and duties as the Board shall authorize except those as are specifically required to be exercised by the Board of Directors or the membership.

h. To enforce and exercise by legal means the provisions of the Declaration, these Bylaws, the Articles of Incorporation of this Association, and the Rules and Regulations of the Association.

i. To pay any taxes or special assessments on any lands owned, operated, or maintained by the Association.

j. To grant easements to any person with respect to properties owned by the Association, and to lease to any person properties owned by the Association.

k. To do all things that the Declaration contemplates or infers to be handled by the Association.

Section 14. Any statutory right to waive notice of a Members' meeting or to take action without a meeting shall be permitted under these Bylaws.

ARTICLE VII

OFFICERS

Section 1. The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors. The Directors may appoint assistant treasurers and assistant secretaries and such other officers as in their judgment may be necessary.

Section 2. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors and shall hold office until their successors shall be duly elected and qualified, or until they are removed, or until they resign, whichever first occurs.

Section 3. Any officer may be removed, either with or without cause, and his or her successor elected, by an affirmative vote of the majority of the Board of Directors at any regular meeting of the Board of Directors or at any special meeting of the Board called for such purpose.

Section 4. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Members and of the Board of Directors. The President shall have all of the general powers and duties which are usually vested in the office of President of a corporation including, but not limited to, the power of appointing committees among the Members from time to time as the President may deem appropriate to assist in the conduct of the affairs of the Association.

Section 5. The Vice President shall perform all the duties of the President in the President's absence and shall assist the President and exercise such other duties as may be required of him from time to time by the Board of Directors.

Section 6. The Secretary shall process all membership applications, issue notices of all Board of Directors' meetings and meetings of the membership and shall attend and keep minutes of the same; he shall have charge of all corporate books, records and papers, except those of the Treasurer; he shall be custodian of the corporate seal; he or she shall have the authority to attest, with his or her signature and press of the Association seal; all contracts or other documents required to be signed on behalf of the Association and shall perform all other such duties as are incident to his or her office. The duties of an assistant secretary, if an assistant secretary is elected, shall be the same as those of the Secretary in the absence of the Secretary.

Section 7. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors. The duties of an assistant treasurer, if an assistant treasurer is elected, shall be the same as those of the Treasurer in the absence of the Treasurer.

Section 8. Any vacancy in the office of President, Vice President, Treasurer or Secretary, or any other office, may be filled by the Board of Directors who may elect a successor to the vacant office at any regular or special meeting, and such successor shall hold office for the balance of the unexpired term.

ARTICLE VIII

FINANCE

Section 1. The funds of the Association shall be deposited in such banks or depositories as may be determined by Board of Directors, from time to time, upon resolutions approved by the Board of Directors, and shall be withdrawn only upon checks and demands for monies signed by such officer or officers of the Association or other person as may be designated by the Board of Directors.

Section 2. The fiscal year of the Association shall begin on the first day of January of each year; provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year at such time as the Board of Directors deem advisable.

Section 3. A financial report of the accounts of the Association shall be made annually and a copy of the report shall be furnished to each Member at the annual meeting.

Section 4. The Board of Directors of the Association shall maintain an assessment roll in a set of accounting books in which there shall be an account for each Lot or Residential Unit. Each account shall designate the name and address of the Member(s), the amount of each Assessment against the Member(s), the dates and amounts in which the Assessments become due, the amounts paid upon the account, and the balance due upon the Assessments. The Board of Directors shall issue, or cause to be issued, upon demand by a Member, a certificate representing the status of Assessments pertaining to said Member. A reasonable charge may be made by the Board of Directors for the issuance of said certificate.

Regular Assessments against the Members shall be made for the fiscal year annually in advance on or before the 20th day of the month proceeding the first month of the fiscal year for which the assessments are made, or on a monthly, quarterly, or semiannual basis, whichever is deemed appropriate by the Board of Directors for a particular year. Such assessments shall be due and payable as directed by the Board of Directors. If an annual budget is not made as required, the assessment(s) shall be presumed to be in the same amount(s) as the last prior fiscal year until changed by an amended assessment.

Section 5. The Board of Directors shall adopt an annual budget on or before December 15th each year for the following calendar year, which budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications, and shall contain estimates of the cost of operating and maintaining the Association.

Section 6. The Board of Directors may, at its option, require that a fidelity bond be obtained for all officers and employees of the Association handling or responsible for Association funds. The amount of such bond shall be determined by the Board of Directors and the premium on such bond shall be paid by the Association as an item of general expense.

Section 7. All Assessments paid by Members of the Association shall be utilized by the Association for the purposes enumerated in the Declaration, the Articles of Incorporation and/or these Bylaws.

Section 8. Termination of membership in the Association shall not relieve or release any such former Member from any liabilities or obligations incurred under or in any way connected with the Association during the period of its membership, or impair any rights against such former Member arising out of, or in any way connected with, such membership and the covenants and obligations incident thereto.

ARTICLE IX **RULES AND REGULATIONS**

The Board of Directors shall have the authority to adopt reasonable Rules and Regulations governing the use and operation of the Common Areas. Such Rules and Regulations shall not conflict with the terms of the Declaration. Copies of such the Rules and Regulations shall be delivered to an Owner upon written request to the Association.

ARTICLE X **REGISTERS AND SEALS**

Section 1. The Secretary of the Association shall maintain a register in the Association office showing the names and addresses of Members. It shall be the obligation of the individual Members to advise the Secretary of the Association of any change of address or of any change of ownership. The Association, for purposes of notification, shall have the right to rely upon the last given address of each of the Members as set forth in said register.

Section 2. The seal of the Association shall have inscribed thereon the name of the Association, the word "Florida", the year of the Association's formation, and the words "corporation not-for-profit". Said seal may be used by causing it or a facsimile thereof to be impressed, affixed or otherwise reproduced.


ARTICLE XI **AMENDMENTS**

These Bylaws may be amended from time to time by resolution adopted by a majority of the Board of Directors and approved by Members holding two-third (2/3) of the Voting Rights, subject to the following restrictions:

1. So long as Declarant is a Member, each amendment of these Bylaws must be first approved in writing by the Declarant.

2. No amendment of these Bylaws shall be effective which impairs or dilutes any right or title of a Member vested in it under a deed or other recorded instrument applicable to the Parcel owned by such Member unless made in accordance with provisions of such deed of instrument.
3. No amendment shall conflict with the Declaration or the Articles of Incorporation of the Association.

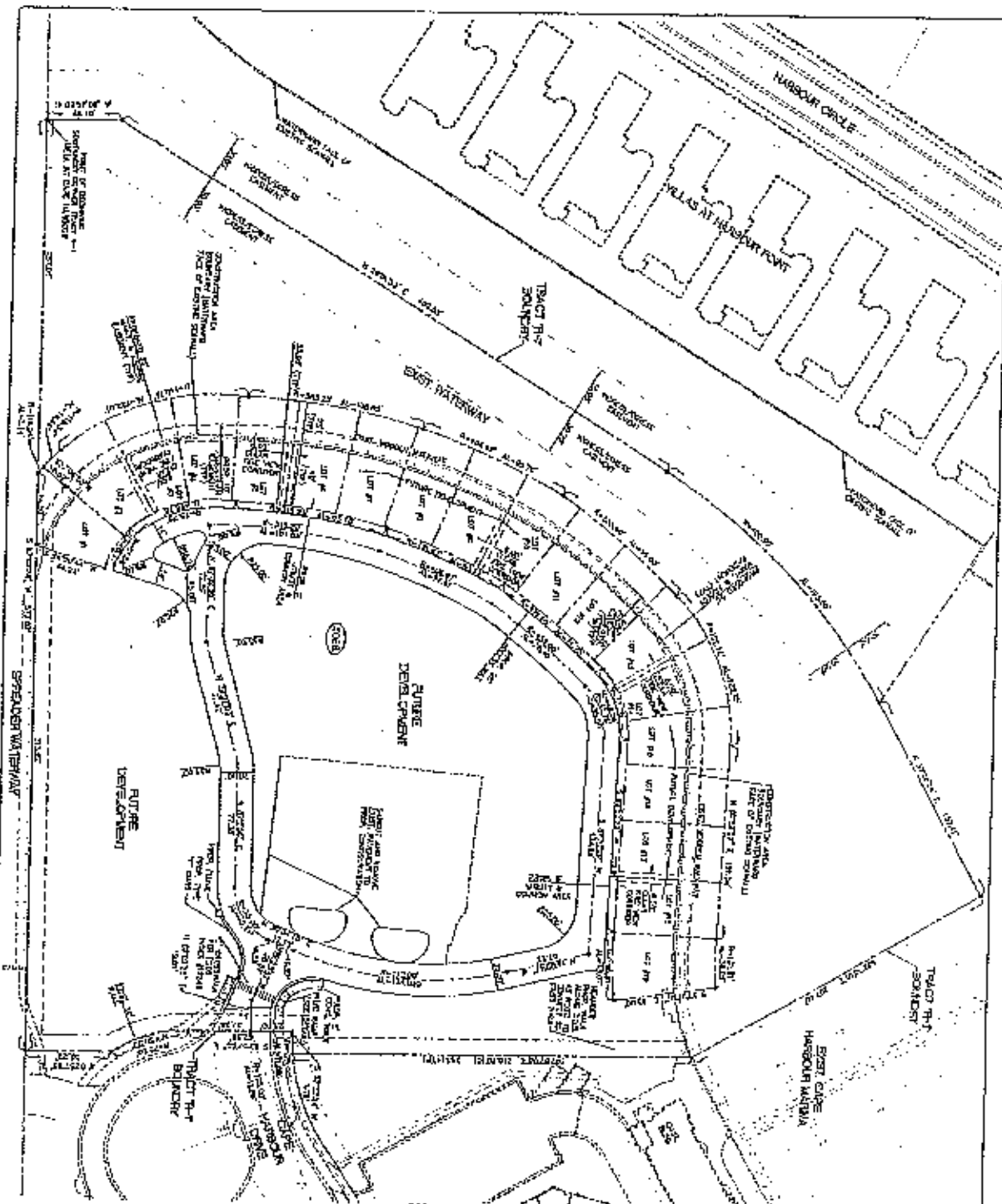
THE FOREGOING WERE DULY APPROVED AS THE BYLAWS OF THE
FUNKY FISH HOUSES AT CAPE HARBOUR HOMEOWNER'S ASSOCIATION,
INC., A FLORIDA CORPORATION NOT FOR PROFIT, AT THE FIRST MEETING
OF THE BOARD OF DIRECTORS.


4/3/09, as Secretary

\\FDCK\lsh\jmet. Group (118)\Waterfront \ Cape Harbour (114)\Funky Fish Houses\Bylaws revised 02-16-09.doc

"EXHIBITS D"

Site Plan



NOTES:
1. ALL DIMENSIONS ARE TO C.C.S.
2. SEE OTHER SHEETS FOR DETAILS.

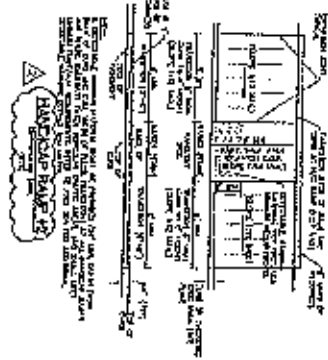


EXHIBIT "E"

The Property

The Waterfront at Cape Harbour, recorded as Instrument Number 2008000125433 in the Public Records of Lee County, Florida.


Exhibit "A"

The Property

The Waterfront at Cape Harbour, recorded as Instrument Number 2008000125434 in the Public Records of Lee County, Florida.

"EXHIBIT F"

Architectural Guidelines

ARCHITECTURAL GUIDELINES AND REVIEW PROCEDURES

FOR

FUNKY FISH HOUSES

AT

CAPE HARBOUR

CAPE CORAL, FL

A DISTINCTIVE WATERFRONT COMMUNITY

February 23, 2009

Revised June 8, 2010

ARCHITECTURAL GUIDELINES AND REVIEW PROCEDURES FOR FUNKY FISH HOUSES AT CAPE HARBOUR

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ARCHITECTURAL GUIDELINES AND REVIEW PROCEDURES FOR FUNKY FISH HOUSES AT CAPE HARBOUR

I. PURPOSE

The purpose of these Architectural Guidelines and Review Procedures is to provide useful information for property owners, their architects and builders regarding the design and construction of Funky Fish Houses at Cape Harbour. Homeowners are required to submit their plans and specifications for review and approval by the Funky Fish House Architectural Control Committee, the "Committee", pursuant to these Architectural Guidelines and Review Procedures.

II. DEVELOPMENT PHILOSOPHY

This community of Funky Fish Houses at Cape Harbour is a particularly unique waterfront neighborhood with a special 'Funky' ambiance and character. The very special nature of this neighborhood is reflected in small lots perched on the water's edge in an intimate setting. The lots are truly exceptional in that the property boundaries actually extend over the water allowing for uniquely imaginative home designs integrated with nature.

The lots will accommodate attractive and efficiently designed multi-level homes within a designated building envelope (See Permitted Building Envelope Plan attached). The homes will have a distinctive 'Key West' style, Seaside or Coastal Architectural character along with creative variations on that theme, which are encouraged.

We all recognize that the design, character and quality of the homes constructed in the Funky Fish House community at Cape Harbour will determine, to a great extent, the nature of life within that community. In recognition of the foregoing, and the long and successful history that architectural controls have in helping to preserve the value, character and aesthetics of residential communities, we have adopted Architectural Guidelines and Review Procedures for the Funky Fish Houses at The Marina, Cape Harbour.

Funky Fish House Architectural Guidelines deal with the specifics of construction, design and site improvement. Building proposals submitted under these Guidelines will be reviewed, commented upon, revised accordingly and then approved by the Committee. It will be the Committee's responsibility to review all proposals for compliance with the Architectural Guidelines, taking considerations into account as follows:

- A. Funky Fish Houses at Cape Harbour, is an especially unique and carefully planned waterfront residential community with natural beauty, quality recreational amenities and controlled development contributing to the benefit of, and enhancing the lifestyle of its residents;
- B. In this community of single-family homes, the Committee encourages classical Key West style designs and architecture that conform to these development guidelines;
- C. It is not necessary for every home at the Funky Fish House community to be unique, however, frequent repetition of designs will not be acceptable, and creative, imaginative variations on the Key West style theme are encouraged;
- D. The primary goal of the Committee is to review the plans, specifications, and sample materials submitted, to determine whether the appearance and construction criteria for the proposed structure conform to the standards, policies and guidelines set forth by the Committee. The Committee does not assume responsibility for the following:

1. The structural adequacy, capacity, or safety features of the proposed structure or improvement;
2. Soil erosion, un-compactable or unstable soil conditions, or site/drainage elevations;
3. Compliance with any or all building codes, safety requirements, governmental laws, regulations and ordinances;
4. Contractor's performance and quality of work.

III. PLANNING THE HOME

- A. In order to achieve the desired development objectives, it is recommended that owners consult a designer, architect or builder familiar with the Funky Fish House at Cape Harbour development standards. Owners are encouraged to contract with "Designated Builders" for the construction of their home. Please check with your sales representative for a current list of 'Designated Builders'.
- B. Owners wishing to engage a builder who is not a 'Designated Builder', will be charged a fee in the amount of 20% of the purchase price of the lot to cover the cost of administrative and design review, and recovery of marketing expense.

IV. ARCHITECTURAL CRITERIA

- A. General Comment - The impact of a home design involves issues that cannot be completely reduced to measurable standards of size, setback, roof pitch, etc. A home that meets all the statistical criteria may still be unacceptable for the Funky Fish House community at Cape Harbour if its overall aesthetic presentation is unacceptable in the judgment of the Committee.
- B. Flood Elevation - Funky Fish Houses at Cape Harbour, is located in a FEMA A-8 flood zone. That designation presently requires finished floor living area elevations of 9.30 feet. (Note: this elevation is measured to the lowest point, e.g. bottom of floor drain). Flood insurance is recommended under any circumstances.
- C. Exterior Design - In order to ensure that home designs do not compromise the special ambiance and character of this community, a number of design elements will be considered, including the following:
 1. Site Utilization – The layout of the Funky Fish House lots in this community present the designer of the homes with both constraints and opportunities. These are small lots in an intimate setting intended to accommodate homes with modest, efficient footprints within designated building envelopes. The relationship of proposed improvements to existing natural and man-made features, the views from the home and adjacent structures, any effect on the streetscape, the use of open space, driveways, and parking areas along with landscape treatment are all matters to be considered.
 2. Scale – Recognizing the constraints in the lot sizes, and having in mind the relationship of the proposed structure to the site in terms of lot coverage, height, width and overall visual impact, we encourage the use of multi-level designs. The scale of buildings is to be broken down to the extent possible with proper massing, fenestration and landscaping.
 3. Massing and Proportion - Relationship of the elements to one another. The massing of various components of the proposed structure should flow together to reflect attractive proportion and mass.

4. Fenestration – Appearance and placement of exterior openings (doors, windows, etc.), relative to the overall design reflecting the communities unique character, for all exterior elevations, compatibility of the design of the home, materials specified, and the manner in which the fenestration is detailed. This is particularly important on the sides of the homes where the number and size of openings are controlled by fire and building codes.
5. Roof Scope - Relationship of roof lines and treatment to the overall design of the home. Flat deck or built-up roof areas intended for sun bathing or other casual use will be permitted as long as the design includes parapets or decorative fence or railings. For pitched roofs, the minimum pitch is 4/12 and maximum is 6/12. Only metal roof material is allowed with pitched roofs. All homes shall have rain gutters – all rain water run-off shall be directed to the front of the house across the street through drainage outlets pre-installed by Developer at the front of the homes.
6. Aesthetics - Overall design quality based on the subjective judgment of the Committee. This includes the overall impact based on issues listed above in concert with use of color.

D. Building Development Standards

Living Area:	Min. 500 Sq. ft.
Setbacks & Height Regulations:	
Front Setback	No Req Setback
Side Setback – Minimum of 3' setback from lot line i.e. minimum of 6' between structures; For Roof Edges (eaves or gutters) minimum of 2' from lot line i.e. 4' Min. between house rooflines. See Permitted Building Envelope Plan Attached	3' or greater
Rear Setback (Consider Tie-backs in Design)	6" from Seawall
Building Height:	4 Story Max.
Detached Structures:	Not Permitted
Porches / Decks:	
Non-habitable, screened or open porch/deck allowed as overhead structure and can extend beyond seawall to rear lot line – must be no wider than the home.	Adequacy of clearance over boardwalk subject to ARB approval

Note: Fire safety requires that there be a 6' separation between structures for access along the sides of the structures.

- E. Service Area - The planning of the home should include areas to accommodate air conditioning compressors and other items that by their nature present an unsightly appearance. The service area or areas should be convenient to the utility service to the site, and screened from view by an approved enclosure or landscaping. Garbage cans should be kept in the garage. There will be an easement of record providing that the six foot areas between homes will allow for ingress and egress to and from the waterfront, and allows access to accommodate maintenance between the homes. This area can be used for placement of air conditioning equipment, or other equipment as long as the same does not encroach on neighbor's property. There are several designated 'fire lanes' between homes where no equipment or other obstructions are allowed. In such cases, the equipment needs to be located on the other side of the home, or in the garage area.
- F. Docks - Each home can have a dock but a dock is not required. If the homeowner decides to have a dock, it must be built by the designated dock contractor pursuant to the design, plans and specifications, and using the materials as promulgated by the Developer. Dock materials and colors, dock boxes and dock lights must conform to the types and styles in use at and around Cape Harbour Marina and are subject to approval by the Architectural Review Board. Details regarding accommodations and limitations for boats, for each lot, are set out in the Dock Layout Plan attached.
- G. Garages - All homes must have space to accommodate a minimum of one vehicle. In the 'Key West' spirit, garage doors and side walls are encouraged but not required, but liberal use of trellis, lattice work and landscaping to screen the lower level of the home from view will be required.
- H. Fences - No fences shall be permitted on any Lot, unless approved by the Declarant or the ARB, as applicable.
- I. Television Antennas and Satellite Dishes - Plans call for cable television to be available at the Funky Fish House community. Where a television antenna or small (no more than 24") satellite dish is desired, it must be located within the house or attic, or installed in such a fashion that they are visually screened from view.
- J. Landscaping - With the unique character of the lots in this community the opportunities for landscaping are limited so the Developer will prepare a landscape plan designed with xeriscape (water conservation landscape method) as the predominant theme. Homeowners will be able to specify landscape 'upgrades' or 'highlight' features utilizing indigenous species. There will be a standard charge to the Homeowner for the installation and maintenance for the 'typical' landscape package, and an 'up-charge' to the Homeowner for the installation and maintenance of any 'upgrades' specified by the Homeowner.
- K. Irrigation - Minimal irrigation will be required and will be installed by Developer as a part of the initial landscape package.
- L. Exterior Form & Design - The exterior form of each residence is a very important aspect of appearance. Large gable ends, long straight walls and flat vertical wall faces without some architectural design relief should be avoided. Planters should be utilized to "soften" the base of the home. A variety of forms and roof overhang widths, are desired. Some examples of these include bay windows, octagonal, circular or other geometric forms. Distinctive architectural features that are desirable include cupolas, fountains, widow's walks, chimney features, balconies with bracketed supports and elaborate entrances. The ground level shall be either stem wall construction, or more suitably, piling construction. The use of concrete pilings with stucco finish is encouraged.

- M. Exterior Materials, Colors and Textures - Exterior finish materials are expected to be of the very highest quality. On the upper levels, the use of varied siding styles is encouraged e.g. typical lap siding, scalloped siding or, vertical bead- board siding (in accent areas). Hardiplank or similar cementitious siding materials are encouraged, and vinyl siding of the very highest quality is allowed. A list of manufacturers of acceptable material is available from the Architectural Control Committee. Woods used for trim shall be durable by type and/or treatment. On the ground level, in lieu of enclosed garage, parking areas may be walled using PVC lattice material and be framed accordingly.

Architectural trim is an important design aspect. This includes items such as columns, trim around windows, treatment of eave conditions, and accent materials and colors. The use of exterior moldings and trim for window and door openings is required. Doors and windows will be reviewed for architectural details.

A variety of windows, glass doors and glass walls that take advantage of views, breezes and natural light are encouraged. Good quality windows and doors with 'high impact glass' are required, with aluminum units being finished in an earth tone, white or dark hunter green factory applied finish. Additional colors may be approved by special request. Glass block may be utilized sparingly, for windows. The Committee must approve awnings for color, material and shape. Mirrored or highly reflective glass will be unacceptable. Samples of all exterior materials, colors and textures shall be submitted at the time of the application for final review. Paint and stain color samples shall be submitted on the actual material to which they will be applied.

Rooflines and roof material are major features of each home's design. The proposed roofing material, color and application will be critical parts of the Committee's design evaluation. The roof pitch should be a minimum 4/12 pitch and a maximum of 6/12 pitch using metal roof material. Multiple roof pitches may be utilized.

- N. Repetitive Designs - Some house designs may be unacceptable for a particular lot because of similarity to homes in the immediate area. If, in the judgment of the Committee, the massing, basic style, roofline, exterior materials, colors or other features of a home are too similar to its neighbors, the design will not be approved.
- O. Mailboxes, etc. - The design and placement of the mailbox and required address signage shall be specified by the developer.
- P. Seawalls and Boardwalk - When the home is built, the wood boards on the boardwalk shall be replaced by the homeowner with "Lumberock" board material, light brown in color, as specified by the Committee. On-going maintenance and necessary repairs of the seawall and boardwalk in order to maintain the same in a good, safe and presentable condition shall be the responsibility of the Homeowner and failure to do so shall be grounds for the Association to perform the necessary work at the expense of the Homeowner and to secure repayment by way of an individual assessment. Preventative maintenance or anticipatory measures especially with respect to the tie-backs and dead-men for the seawall may be required by the Committee when the home is built.
- Q. Exterior Light Fixtures - Fixtures shall be reviewed by the Committee as a part of the overall package. Decorative fixtures are desired. At least one light at the front of the home must be a minimum of 60-watt fixture and utilize a photo-cell sensor to be 'on' during non-daylight hours.

V. ARCHITECTURAL REVIEW PROCESS

Plans for all new construction, subsequent alterations or color changes, and any additions or other changes must be approved by the Committee.

A. Application Policies and Procedures

1. Application Form - Applications should be made in duplicate on forms to be provided upon request.
2. Preliminary Application for Review - Prior to the preparation of construction drawings the Committee recommends that the applicant submit the application and preliminary building plans for its comment. The preliminary application should be accompanied by two sets of plans and may be drawn in "sketch" form. A preliminary application includes:
 - a. Site Plan:
 - (1) Drawn at a scale of $\frac{1}{4}" = 1.0'$
 - (2) Show existing and proposed topography (approximate grades).
 - (3) Show setbacks from property line.
 - (4) Indicate site development including walks, drives, patios, decks, fences, docks, walls, accessory structures, etc.
 - b. Floor Plans:
 - (1) Draw to a minimum scale of $\frac{1}{4}" = 1'-0"$.
 - (2) Show changes in level, relationship to important site features, and clearance for decks over boardwalk, etc.
 - c. Exterior Elevations:
 - (1) Indicate materials to be utilized.
 - (2) Show four elevations or provide a model.
 - d. Submit any additional information that will aid the Committee in evaluating the proposed design.
3. Final Application for Review - Four complete sets of documents shall accompany the application. If approved, three sets of documents will be stamped "Approved" and returned to the applicant. Each sheet of drawings and the first page of other documents shall include the lot number, applicant's name, architect and the date of drawings. Documents submitted include the following:

- a. Site Plan:
 - (1) Provide a detailed site plan indicating compliance with these Guidelines (show setbacks, walls, drainage, roof plan, driveways, etc.).
 - (2) Paving materials must be shell aggregate with base rock or concrete with shell aggregate surface.
 - b. Landscape Plan:
 - (1) [To be provided by Developer]
 - c. Floor Plans:
 - (1) Draw to a minimum scale of 1/4" = 1' -0".
 - (2) Show any changes in floor level.
 - (3) Show all dimensions.
 - (4) Include all door and window symbols and schedules.
 - (5) Show all decks and other appurtenances detailing height of deck or porch and clearance over boardwalk, if applicable.
 - d. Elevations:
 - (1) Draw to a minimum scale of 1/4" = 1' -0".
 - (2) Show all exterior views of the house including those partially blocked from view by garages, fences or other parts of the building.
 - (3) Indicate all exterior finish materials, textures and accent colors.
 - (4) Show finished floor elevations and existing and proposed grade lines.
 - (5) Show all exterior openings.
 - e. Wall Sections:
 - (1) Draw to a minimum scale of 1/2" = 1' -0".
 - (2) Indicate roof pitch.
4. Submission of Typical Building Materials - Except when the Committee specifically elects to waive this requirement, where the colors or materials are known to the Committee, both the names of the proposed exterior materials and physical samples will be included or will accompany the application as listed below. An application will not be considered complete without these exterior samples.

- a. Include the name, grade, description and sample of roofing to be used.
 - b. Include the name, grade and sample of any exterior cladding with chosen color applied.
 - c. See attached application form for additional information to be submitted.
5. Meetings – The Committee will meet at such times and locations as determined by the Committee. The Committee shall make a reasonable effort to meet within five (5) business days after submission of the application, and to take appropriate action by responding to the applicant within ten (10) business days of submission. The Committee may return an application if the application is incomplete. Applicants are not to attend meetings unless so requested by the Committee.
6. Architectural Control Committee Response - The Committee may offer specific suggestions for further consideration, which may resolve any design problems found by the Committee. The Committee can, however, reject an application based on the professional judgment of its members without citing specifics for the following reasons, among others:
- a. Insufficient information to adequately evaluate the design or design intent;
 - b. Incompatible design elements;
 - c. Inappropriate design concept or design treatment.

The Committee will not normally comment on or reject a custom-designed home because of its interior elements except in cases where those features affect the exterior appearance. Observations by the Committee that it believes could make the home acceptable will be passed on to the applicant for consideration.

B. Construction

1. Pre-Construction Activities

- a. No lot is to be cleared, or construction otherwise started, until the Committee has approved the plans and the City of Cape Coral has issued all required building permits. The Committee may grant exceptions to this requirement for the purpose of allowing property owners to landscape sod and irrigate lots where it is anticipated that building construction will not commence within six (6) months of the purchase date of a lot.
- b. Approval by the Committee does not preclude the necessity for obtaining a Building Permit from the City of Cape Coral Building Department.
- c. An application should be made to Lee County Electric Cooperative for temporary and permanent electrical service. Application for water and sewer service must be made to the City of Cape Coral.
- d. The connections for water and sewer are indicated on each lot. Care should be exercised in clearing of the lot so as to not disturb buried cables, water and sewer lines.

2. During Construction

- a. Damage to curbs, streets, common areas and silting of canals as a result of construction will be charged to the owners or the applicable Builder. A construction and damage cost deposit ("Construction Deposit") of \$5,000.00 may be charged by the Committee to ensure that funds are available to repair any such damage. Any unused portion of the \$5,000.00 shall be refunded to the Builder within fifteen (15) days of the City's issuance of a Certificate of Occupancy, and after Seller has determined that no subdivision improvements have been damaged or destroyed as a result of the Builder's development and construction activities.
- b. The use of adjoining properties for access to the site or for the storage of materials without the written permission of the owner / developer is forbidden.
- c. The storage of materials must be in an inconspicuous area of the site. Cleanliness will be practiced and contractors are required to make frequent clean-ups of surplus materials, trash wrappers, etc. A refuse container must be maintained on each site for the disposal of trash and litter. Unsightly building sites constitute nuisances to the community and will be handled according to the covenants and restrictions.
- d. Because sewer, water, electric, TV and telephone service to the home are underground, care should be taken to ensure that these lines have been installed and water and sewer connections made prior to paving drives, walks, etc. Any questions about location of underground lines should be resolved in the field.
- e. A portable toilet is required for all construction sites.
- f. Builder and all subcontractors will be required to use the designated construction entrance if such an entrance has been designated for a particular lot.
- g. Builder is required to erect and maintain silt barriers on perimeters of the home-sites that are adjacent to water or preserve areas. The Committee may require additional silt barriers as deemed appropriate by the Committee. Builder shall also exercise care so that storm sewer structures are not silted in.

3. Completion of Construction

The property owner and contractor are responsible for:

- a. Removing all building debris from the site and surrounding area.
- b. Removing contractor's signs.
- c. Removing the temporary electric service electrical pole as soon as practical.

4. General Information for Builders

- a. One sign to be approved by the Committee, displaying the contractor and/or architect's name may be temporarily erected on the lot. When the job is completed, the sign must be removed immediately. No other signs will be displayed at any time, including those of subcontractors or signs advertising other goods or services.
- b. The working hours for construction personnel at Cape Harbour will be from 7:00 a.m. to 7:00 p.m., Monday through Friday, and 7:00 a.m. through 5:00 p.m. on Saturday. No work will be performed on Sunday. The Committee must approve work after hours or on Sunday. All builders must advise their personnel of the above regulations prior to sending them to Cape Harbour.
- c. Worker's vehicles must not be parked in the roadway. Please pull your vehicles off the road onto the site. We remind you that the streets in Cape Harbour are private property and must be maintained for our members. Oil and gasoline leaks from vehicles break down the road surface. Vehicles parked on the roadway will not be tolerated. Violation of this restriction will result in your not being permitted to enter the development.
- d. The posted speed limit in Cape Harbour is 10 miles per hour. It is expected that you will adhere as closely to this as is reasonably expected. Vehicles traveling at an unsafe speed will be warned one time and continued violation could result in you not being allowed to enter the premises.
- e. We have had many complaints about the volume of radios being played on the construction sites. Your cooperation in keeping radios at a low volume is expected and appreciated.
- f. All contractors, subcontractors and their employees, agents and sub-subcontractors will be required to be properly attired at all times. All contractors shall observe appropriate hurricane procedures.
- g. The Developer shall design and approve all signs and permit boards. No other signs are allowed.

REQUEST FOR DESIGN REVIEW

To: ARCHITECTURAL REVIEW BOARD
5789 CAPE HARBOUR DR, STE. 201
CAPE CORAL, FL. 33914
PHONE (239) 541-1372
FAX (239) 945-4070

DATE: _____

Fill in all blanks. If a request for information does not apply, respond by indicating N/A. This request form must accompany every submittal to the ARB.

HOMESITE: _____ BLOCK: _____ NEIGHBORHOOD: Funky Fish Houses

From: Builder's Name: _____ End User: _____
Phone: _____ Fax: _____ Mailing Address: _____
Model Name: _____
A/C sq. ft. _____ Total sq. ft. _____ OR: _____ Spec. _____ Model _____
Roof pitch: _____ FFE: _____ (check one)

Requesting Approval of:

- _____ Preliminary Concept Plans (must include Site Plan, Floor Plan and Front Elevation)
- _____ Final Construction Plans including: _____ Grading Plan (required FFE & direction of drainage flow)
- _____ Landscape Plan and Plant List (type, quantities, sizes and existing)
- _____ Exterior Materials and Colors (samples must accompany request)
- _____ Other (revised plans, modifications, etc.) _____

EXTERIOR MATERIALS AND COLOR SPECIFICATIONS – INCLUDES SAMPLES

PRODUCT	MATERIAL	COLOR #	COLOR NAME AND MANUFACTURER
1. roof			
2. walls			
3. trim/bands			
4. front door			
5. garage door			
6. fascia			
7. railings/fence			
8. shutters			
9. window frames			Bronze _____ White _____ Other _____
9a. Raw mill aluminum window frames not permitted.			
10. window glass			
10a. Tempered glass or similar material recommended for all windows and sliding glass doors facing water "Mirror" finish not permitted.			
11. lanai enclosure			
11a. Check neighborhood covenants for color restrictions regarding screen enclosures.			
12. driveway			
12a. Textured finish is preferred. Check neighborhood covenants for requirements.			
13. patio/deck			

Mechanical equipment and trash container screening: _____
All mechanical equipment must be screened, preferably with low walls softened by landscaping or with plant material of sufficient quantity, size, height and density at the time of planting to adequately screen the equipment from all off-site views.
Other information (Outdoor Lights, etc.): _____

OWNER ASSURANCE

I (WE) UNDERSTAND AND AGREE:

That ARB approval does not constitute a representative or warranty of the quality of the work performed and that I am solely responsible for determining that the contractor's performance is satisfactory.

To submit proof of insurance for each contractor, to the managing entity, prior to commencement of work.

That it is my responsibility to comply with all applicable governmental requirements, including but not limited to permitting.

I (We) the undersigned unit home owner(s), accept the responsibility for any structural or other damage resulting from work done on my home. Upon resale, the new owner(s) become responsible for same as stated in the covenant.

Date: _____

FOR USE BY THE COMMITTEE

Approval Section:

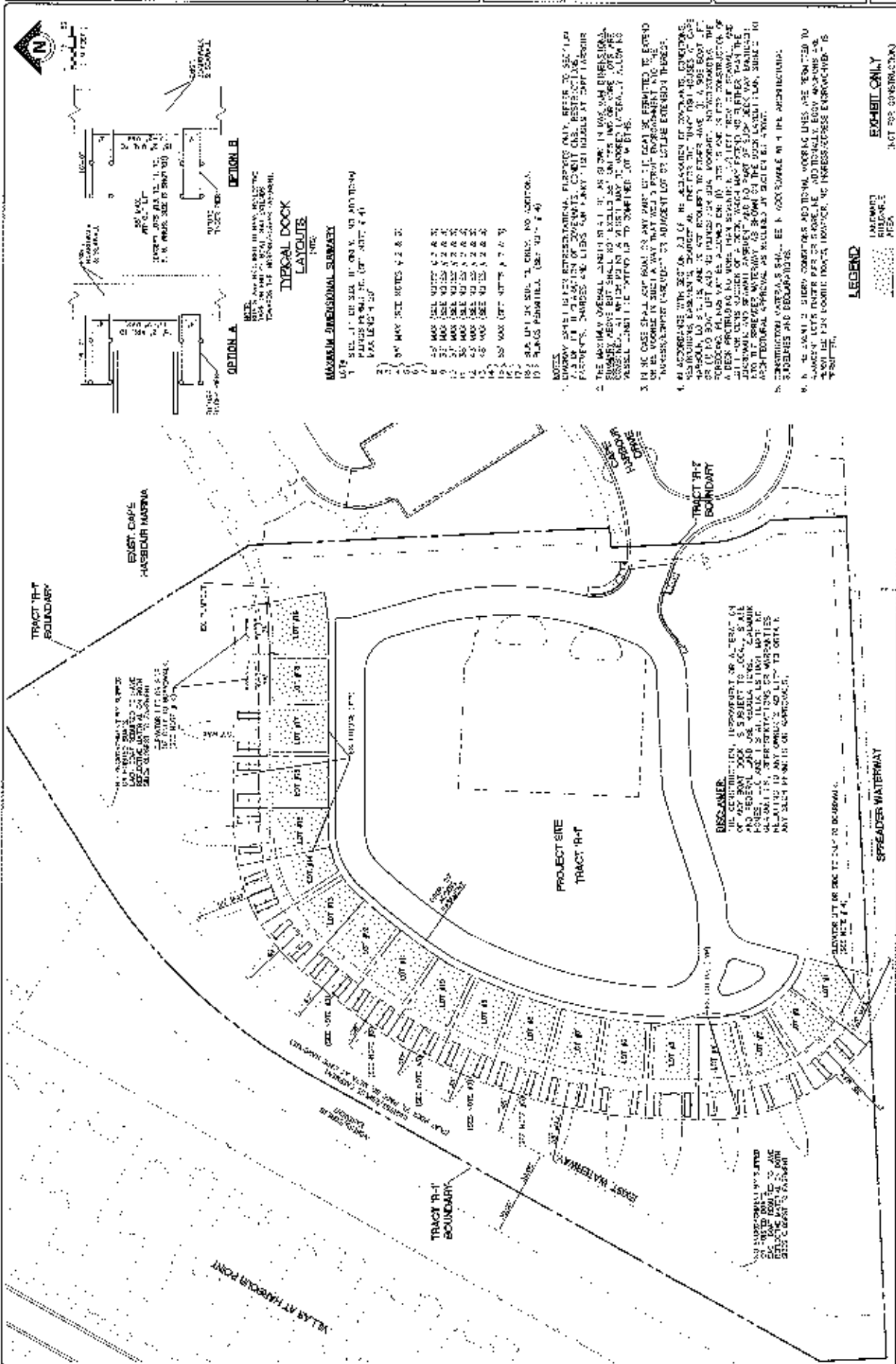
() Approved () Disapproved () Pending (more info requested) () Subject to letter attached

Explanation:

Date: _____

Committee Signatures:

Submit to:
Realmark Homes, LLC.
5789 Cape Harbour Drive, Suite 201
Cape Coral, FL 33914
Phone (239) 541-1372 Fax (239) 945-4070



"EXHIBIT G"

Access Easement

This instrument was prepared by:
Julie M. Drake, Esquire
Belaños Truxton, PA
12800 University Drive, Suite 350
Fort Myers, Florida 33907

INSTR # 2009000086430, Pages 11
Doc Type EAS, Recorded 04/15/2009 at 09:15 AM,
Charles Green, Lee County Clerk of Circuit Court
Rec. Fee \$95.00
Deputy Clerk DMAYS
#5

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement (the "Easement Agreement") is made effective this 3rd day of April, 2009 (the "Effective Date"), between Realmark Cape Marina, LLC, a Florida limited liability company ("RCM") and Realmark Homes, LLC, a Florida limited liability company (the "RH").

Preliminary Statement

RCM is the owner of that certain real property situate, lying and being in Lee County, Florida, as more particularly described on Exhibit "A" hereto (the "RCM Property").

RH is the owner of that certain real property situate, lying and being in Lee County, Florida, as more particularly described on Exhibit "B" hereto (the "RH Property") consisting of nineteen (19) residential lots (the "Lots", and each being referred to herein as a "Lot").

RH desires to obtain and RCM desires to grant to RH easements for vehicular access to the Lots.

NOW THEREFORE, in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties have agreed, as follows:

1. Preliminary Statement. The Preliminary Statement is true and correct and, by this reference is incorporated into and made part of this Easement Agreement.

2. Grant of Easements. RCM hereby grants to RH and any subsequent owners of Lots within the RH Property a perpetual non-exclusive easement, in favor of each owner of a Lot, together with his lessees, licensees, invitees, family members and guests, for vehicular ingress and egress over, through and across that portion of the RCM Property, which is described on Exhibit "C" (the "Easement").

3. Right to Modify. RCM shall have the right to relocate and/or reduce the road width of the Easement, from time to time, within the RCM Property in accordance with the requirements of any and all applicable governmental authority. RCM shall also have the right to restrict traffic to travel one-way, in accordance with signage to be placed within the Easement.

4. Obstructions. No barriers, fences, walls, ditches, barricades, or other structures will be erected on or along the Easement so as to unreasonably burden or interfere with the purpose for which the Easement was granted.

5. Term and Amendment. This Easement Agreement shall become effective upon its recordation in the Public Records of Lee County, Florida, and shall run with the land, regardless of whether specifically mentioned in any subsequent deed or conveyance of all or a part of the RCM or RH Property. This Easement Agreement may be amended or modified only by an instrument signed by the all of the owners of the RCM or RH Property. No amendment shall become effective prior to a duly executed and acknowledged copy being recorded in the Public Records of Lee County, Florida.

6. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the RCM or RH Property to the general public or for any public use or purpose whatsoever.

7. Severability. Invalidation of any term or provision of this Easement Agreement, by judgment or court order, shall not affect any of the other provisions hereof which shall remain in full force and effect.

8. Successors and Assigns. The Easement Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and/or assigns.

9. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa. The headings used herein are for convenience only and shall not be given any weight in interpreting or construing the substantive provisions hereof.

10. Exhibits. All exhibits referenced herein and attached hereto are incorporated in this Easement Agreement by this reference.

11. Governing Law. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement and on this 3rd of April, 2009.

Signed, sealed and delivered
in the presence of:

Grantor:

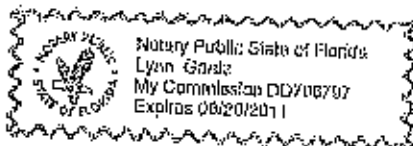
Realmark Cape Marina, LLC,
a Florida limited liability company

Sign: [Signature]
Print Name: Aileen Gibbs
Sign: [Signature]
Print Name: JANE Kirkman

By: [Signature]
Craig A. Dearden, President

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to and acknowledged before me this 3rd day April, 2009, by Craig A. Dearden, as Vice President of Realmark Cape Marina, LLC, a Florida limited liability corporation. He (✓) is personally known to me or () has produced _____ identification.



[Signature]
Notary Public, State of Florida
Print Name: Lynn Gaste
My commission expires: 08/20/2011

Grantee:

Realmark Homes, LLC,
a Florida limited liability company

Sign: [Signature]
Print Name: Aileen Gibbs

By: [Signature]
Craig A. Dearden,
Vice President

Sign: [Signature]
Print Name: JANE Kirkman

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to and acknowledged before me this 3rd
day April, 2009, by Craig A. Dearden, as Vice-President of Realmark Homes, LLC, a
Florida limited liability corporation. He (☒) is personally known to me or () has
produced _____ identification.



[Signature]
Notary Public, State of Florida
Print Name: Lynn Gantz
My commission expires: 08/20/2011

Mortgagee Consent

Regions Bank, as successor by merger to AmSouth Bank, N.A. being the owner and holder of a Mortgage dated October 18, 2005, which was recorded as Instrument Number 2005000083142, in the Public Records of Lee County, Florida, encumbering the Property, hereby consents to the foregoing Declaration of Easements.

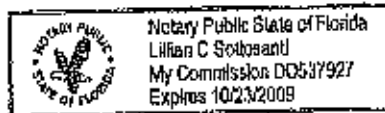
Dated this 13th day of March, 2009.

Regions Bank

By: Russell L. Phillips
Print Name: Russell L. Phillips
Title: Vice President

State of Florida)
County of Collier) ss

The foregoing instrument was acknowledged before me this 13th day of March, 2009, by Russell L. Phillips, as VP of Regions Bank. He/She () is personally known to me or () has produced _____ as identification.



Lillian C. Sottosanti
Notary Public, State of Florida
Print Name:
My commission expires:

Index of Exhibits

- A. The RCM**
- B. The RH Property**
- C. Easement**

Exhibit "A"

The RCM Property

Tract R-1 of Meta at Cape Harbour, according to the plat thereof, recorded in Plat Book 71 at Page 74 of the Public Records of Lee County, Florida.

Less and except the RH Property.

Exhibit "B"

The RH Property

The Waterfront at Cape Harbour, recorded as Instrument Number
2008000125434 in the Public Records of Lee County, Florida

Exhibit "C"

Easement

C

LEGAL DESCRIPTION:

A TWENTY-FIVE FOOT (25') MAINTENANCE AND ACCESS EASEMENT LYING IN TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND SITUATED IN SECTION 21, TOWNSHIP 45 SOUTH, RANGE 23 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA.

COMMENCE AT THE SOUTHWEST CORNER OF TRACT R-1, META AT CAPE HARBOUR. FROM SAID POINT OF COMMENCEMENT RUN N87°02'55"E ALONG THE SOUTHERLY LINE OF SAID TRACT R-1 FOR A DISTANCE OF 218.64 FEET TO THE POINT OF BEGINNING, BEING A NON-TANGENT POINT OF CURVATURE OF A 116.54 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S35°14'12"W, HAVING A CENTRAL ANGLE OF 9°49'25", A CHORD BEARING AND DISTANCE OF N50°01'06"W AND 19.96 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 19.90 FEET TO A POINT OF COMPOUND CURVATURE OF A 140.70 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S45°18'46"W, HAVING A CENTRAL ANGLE OF 40°40'27", A CHORD BEARING AND DISTANCE OF N19°51'01"W AND 118.27 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 122.05 FEET TO THE POINT OF COMPOUND CURVATURE OF A 381.71 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS S88°47'27"W, HAVING A CENTRAL ANGLE OF 16°16'25", A CHORD BEARING AND DISTANCE OF N35°55'39"E AND 108.48 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 108.85 FEET TO THE POINT OF COMPOUND CURVATURE OF A 486.97 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N71°02'08"W, HAVING A CENTRAL ANGLE OF 11°23'08", A CHORD BEARING AND DISTANCE OF N41°39'22"E AND 96.59 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 96.75 FEET TO THE POINT OF COMPOUND CURVATURE OF A 516.60 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N58°03'12"W, HAVING A CENTRAL ANGLE OF 10°15'02", A CHORD BEARING AND DISTANCE OF N37°04'19"E, 95.87 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 96.00 FEET TO THE POINT OF COMPOUND CURVATURE OF A 122.76 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N47°48'10"W, HAVING A CENTRAL ANGLE OF 47°48'38", A CHORD BEARING AND DISTANCE OF N66°02'09"E AND 99.23 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 102.15 FEET; THENCE RUN N88°52'29"E FOR A DISTANCE OF 121.04 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 131.81 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, TO WHICH A RADIAL LINE BEARS 502°40'48"W, HAVING A CENTRAL ANGLE OF 13°02'55", A CHORD BEARING AND DISTANCE OF N86°09'20"E AND 79.95 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 30.02 FEET TO AN INTERSECTION WITH A LINE THAT BEARS S10°22'07"E; THENCE RUN S10°22'07"E FOR A DISTANCE OF 25.00 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 156.81 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, TO WHICH A RADIAL LINE BEARS S10°22'07"E, HAVING A CENTRAL ANGLE OF 12°48'55", A CHORD BEARING AND DISTANCE OF S86°02'20"W AND 35.00 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 35.07 FEET; THENCE RUN S89°52'29"W FOR A DISTANCE OF 120.45 FEET TO THE POINT OF CURVATURE OF A 43.35 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N01°04'27"E, HAVING A CENTRAL ANGLE OF 47°40'30", A CHORD BEARING AND DISTANCE OF S86°02'09"W AND 79.02 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 81.35 FEET TO THE POINT OF COMPOUND CURVATURE OF A 511.60 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N47°48'10"W, HAVING A CENTRAL ANGLE OF 10°08'12", A CHORD BEARING AND DISTANCE OF S37°07'42"W AND 90.40 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 90.52 FEET TO THE POINT OF COMPOUND CURVATURE OF A 451.97 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N62°46'36"W, HAVING A CENTRAL ANGLE OF 11°14'05", A CHORD BEARING AND DISTANCE OF S21°36'22"W AND 90.44 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 90.52 FEET TO THE POINT OF COMPOUND CURVATURE OF A 358.23 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N74°58'08"W, HAVING A CENTRAL ANGLE OF 16°27'57", A CHORD BEARING AND DISTANCE OF S66°48'11"W AND 102.80 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 102.05 FEET TO THE POINT OF COMPOUND CURVATURE OF A 115.78 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S01°21'54"W, HAVING A CENTRAL ANGLE OF 50°16'35", A CHORD BEARING AND DISTANCE OF S15°30'12"E AND 90.37 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 101.60 FEET TO THE POINT OF COMPOUND CURVATURE OF A 91.54 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S44°50'10"W, HAVING A CENTRAL ANGLE OF 31°17'52", A CHORD BEARING AND DISTANCE OF S61°48'46"E AND 49.39 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 48.60 FEET TO AN INTERSECTION WITH A LINE THAT BEARS S14°52'44"W; THENCE RUN S14°50'44"W FOR A DISTANCE OF 4.24 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF TRACT R-1; THENCE RUN ALONG SAID SOUTHERLY LINE S87°02'58"W FOR A DISTANCE OF 14.50 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 17,160 sq. ft. OR 0.39 ACRES, MORE OR LESS.

DESCRIPTION TO ACCOMPANY SKETCH

TWENTY-FIVE FOOT (25') MAINTENANCE AND ACCESS EASEMENT

A PORTION OF TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

STOUTEN & ASSOCIATES, INC.
SURVEYORS
201 Highway 90, Suite 200, Cape Coral, FL 33904
Phone: (239) 342-7488 Fax: (239) 342-7488
www.stoutenandassociates.com

"EXHIBIT H"

Declaration of Easement Seawall

This instrument was prepared by:
Julie M. Drake, Esquire
Bohños Truxton, PA
12800 University Drive, Suite 350
Fort Myers, Florida 33907

INSTR # 2008000090431, Pages 15
Doc Type EAS, Recorded 04/15/2009 at 09:16 AM,
Clarita Green, Lee County Clerk of Circuit Court
Rec. Fee \$129.00
Deputy Clerk DMAYS
#7

**Declaration of Easement
(Boardwalk and Seawall)**

This Declaration of Easement (the "Declaration") is made effective as of the 3rd day of April, 2009 (the "Effective Date"), by Realmark Homes, LLC, a Florida limited liability company ("Declarant").

Preliminary Statements

Declarant is the owner of that certain real property as more particularly described in Exhibit "A" hereto (the "Property").

The Property is the subject of The Plat of Waterfront at Cape Harbour, recorded as Instrument Number 2008000125434 in the Public Records of Lee County, Florida, consisting of nineteen (19) residential lots (the "Lots") and Declarant desires to provide the Lot owner's (the "Owner's") easements for (i) pedestrian ingress and egress over, through, and across a portion of the Property (the "Boardwalk") and (ii) for maintenance and access to the seawall located on a portion of the Property (the "Seawall") and the Boardwalk.

Now, Therefore, in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties have agreed, as follows:

1. Preliminary Statements. The Preliminary Statements are true and correct and, by this reference, are incorporated into and made a part of this Declaration.

2. Grant of Easements. Declarant hereby grants to the Owners and the Owner's family members and guests, together with permitted invitees, licensees, tenants, employees, agents, contractors, successors and assigns, perpetual, non-exclusive easements, as follows:

- (a) a 10 ft. pedestrian easement (the "Boardwalk Easement"), as particularly described in Exhibit "B" hereto in order to accommodate a pedestrian walkway, otherwise known as the Boardwalk located or to be located within the Seawall Easement.
- (b) a 25 ft. maintenance and access easement (the "Seawall Easement"), as particularly described in Exhibit "C" hereto for maintenance and access to the Seawall located or to be located within the Seawall Easement.

3. Construction. Declarant, its successors or assigns, reserves the right to construct individual decks over the Boardwalk (the "Residential Units"), which shall be constructed at a minimum height clearance of eight (8) feet, over the Boardwalk, in order to accommodate pedestrian traffic over, through and across the Boardwalk, subject to all applicable governmental regulations.

4. Obstructions. No barriers, fences, walls, ditches, barricades, or other structures shall be erected so as to unreasonably burden or interfere with the purpose for which the Boardwalk Easement and Seawall Easement were granted.

5. Maintenance Obligations. Each Owner shall be responsible for the maintenance and repair of that portion of the Boardwalk and the Seawall, including but not limited to the seawall and all other improvements located within his Lot, without contribution from Declarant, the Association or other Owners. In the event that an Owner shall fail to perform any required maintenance or repair, within thirty (30) days after written notice, from The Funky Fish Houses Homeowner's Association, Inc., a Florida not-for-profit corporation (the "Association"), then the Association may, but shall not be obligated to, perform such maintenance or repair in which event the Association shall be entitled to reimbursement from the Owner for the maintenance or repair, within ten (10) days after presentment of copies of appropriate invoices for such costs and expenses. In the event that the Association does not perform the required maintenance or repair, the owner of the marina facilities, Realmark META, LLC, its successors or assigns (the "Marina Owner") may, but shall not be obligated to, perform such maintenance in which event the Marina Owner shall be entitled to reimbursement from the Owner for the maintenance or repair, within ten (10) days after presentment of copies of appropriate invoices for such costs and expenses. Any payment not made within thirty (30) days of the date when due shall bear interest at the rate of twelve (12%) percent per annum from the date when due until paid in full. In the event that payment is not made when due, the Association or the Marina Owner, as applicable shall have the right to file a claim of lien against the Lot to secure payment, including interest and attorney's fees.

6. Insurance. Each Owner shall be responsible at its own expense for maintaining general liability and other insurance to cover such risks as they may determine to be appropriate.

7. Term and Amendment. This Declaration shall become effective upon its recordation in the Public Records of Lee County, Florida, and shall run with the land, regardless whether specifically mentioned in any subsequent deed or conveyance of all or a part of the Property and shall be binding on all persons subsequently acquiring all or a part of the Property. This Declaration may be amended or modified only by an instrument signed by the Declarant or the Association. No amendment shall become effective prior to a duly executed and acknowledged copy being recorded in the Public Records of Lee County, Florida.

8. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the properties to the general public or for any public use or purpose whatsoever

9. Severability. The invalidity of any provision of this Declaration shall not affect the enforceability of the remaining provisions of this Declaration or any part hereof. In the event that any provision of this Declaration shall be declared invalid by a court of competent jurisdiction, the parties agree that such provision shall be construed, to the extent possible, in a manner which would render the provision valid and enforceable or, if the provision cannot reasonably be construed in a manner which would render the provision valid and enforceable, then this Declaration shall be construed as if such provision had not been inserted.

10. Successors and Assigns. This Declaration shall inure to the benefit of, and be binding upon, Declarant and its respective successors and/or assigns.

11. Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa. The headings used herein are for convenience only and shall not be given any weight in interpreting or construing the substantive provisions hereof.

12. Exhibits. All exhibits referenced herein and attached hereto are incorporated herein by this reference.

13. Governing Law. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida without regard to principles of conflicts or choice of laws.


IN WITNESS WHEREOF, the undersigned have executed this East Basement Agreement as of the day and year first above written.

Witnesses:

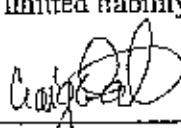
Realmark Homes, LLC,
A Florida limited liability company

Sign:

Print Name:

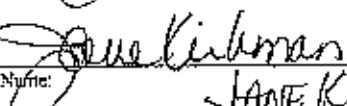

Aileen Gibbs

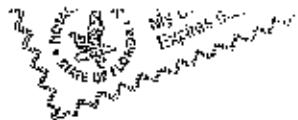
By:


Craig A. Dearden, Vice President

Sign:

Print Name:


JANE KIRKMAN



State of Florida
County of Lee

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Craig A. Dearden, as Vice President of Realmark Homes, LLC, a Florida limited liability company. He (☒) is personally known to me or (☐) has produced _____ as identification.



Lynn Gantz
Notary Public
Print Notary Name: Lynn Gantz

P:\2006\Realmark Group (P28)\Wendell H Cape Harbour (161)\Declaration of Basement Board\dk.senwalk.1.17.09.doc

Mortgagee Consent

Regions Bank, as successor by merger to AmSouth Bank, N.A. being the owner and holder of a Mortgage dated October 18, 2005, which was recorded as Instrument Number 2005000083142, in the Public Records of Lee County, Florida, encumbering the Property, hereby consents to the foregoing Declaration of Easement.

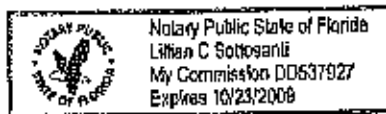
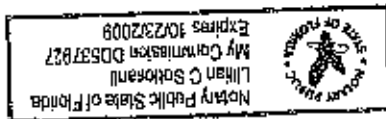
Dated this 13th day of March, 2009.

Regions Bank

By: [Signature]
Print Name: Russell L. Phillips
Title: Vice President

State of Florida)
County of Collier) ss

The foregoing instrument was acknowledged before me this 13th day of March, 2009, by Russell L. Phillips, as VP of Regions Bank. He/She () is personally known to me or () has produced _____ as identification.



Lillian C. Sottosanti
Notary Public, State of Florida
Print Name:
My commission expires:

JOINDER TO DECLARATION OF EASEMENT

This Joinder to the Declaration of Easement is executed by is executed by The Funky Fish Houses Homeowner's Association, Inc., a Florida not-for-profit corporation (the "Association") for the purpose of confirming the agreement of the Association to maintain and/or repair the Boardwalk and/or Seawall in the event that the Owner(s) fails to do so

Dated this 3rd day of April, 2009.

Witnesses:

The Funky Fish Houses
Homeowner's Association, Inc.
a Florida not-for-profit corporation

Sign: *Fileen Gibbs*

Print Name: Fileen Gibbs

Sign: *Jane Kirkman*

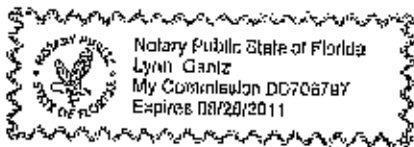
Print Name: JANE Kirkman

By: *Craig A. Dearden*

Craig A. Dearden, President

State of Florida)
County of Lee)

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Craig A. Dearden, as President of the Funky Fish Houses Homeowner's Association, Inc., a Florida not-for-profit corporation. He is (☒) personally known to me or (☐) has produced _____ as identification.



Lynn Ganiz
Notary Public, State of Florida
Print Name: Lynn Ganiz
My commission expires: 08/28/2011

JOINDER TO DECLARATION OF EASEMENT

This Joinder to the Declaration of Easement is executed by is executed by Realmark META, LLC, a Florida limited liability company (the "Marina Owner") for the purpose of confirming the agreement of the Marina Owner to maintain and/or repair the Boardwalk and/or Seawall in the event that the Owner(s) fails to do so

Dated this 3rd day of April, 2009.

Witnesses:

Realmark META, LLC,
a Florida limited liability company

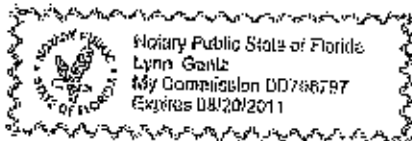
Sign: [Signature]
Print Name: Aileen Gibbs

By: [Signature]
Craig A. Dearden, Vice President

Sign: [Signature]
Print Name: JANE KULMAN

State of Florida)
County of Lee)

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Craig A. Dearden, as Vice President of Realmark META, LLC., a Florida limited liability company. He is (☒) personally known to me or () has produced _____ as identification.



[Signature]
Notary Public, State of Florida
Print Name: Lynn Gantz
My commission expires: 08/20/2011

INDEX OF EXHIBITS

- A. The Property
- B. Boardwalk Easement
- C. Seawall Easement

EXHIBIT "A"

Property

The Waterfront at Cape Harbour, recorded as Instrument Number 2008000125434 in the Public Records of Lee County, Florida.

EXHIBIT "B"

Boardwalk Easement

3

A PEDESTRIAN WALKWAY EASEMENT LYING IN TRACT R-1, BLOCK 2004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND SITUATED IN SECTION 21, TOWNSHIP 45 SOUTH, RANGE 23 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA.

SAID PARCEL CONTAINS 6,779 sq.ft., MORE OR LESS.

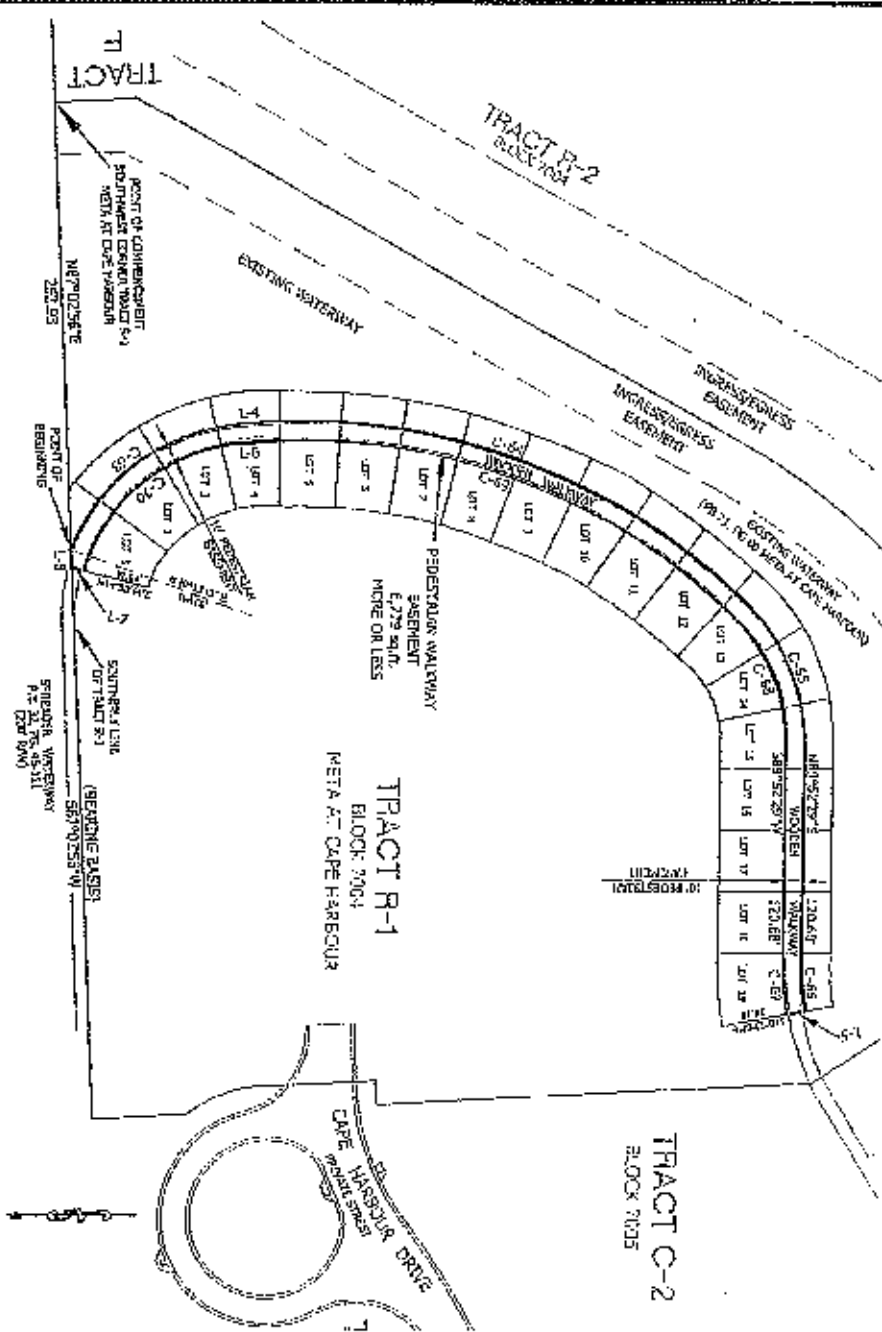
A PORTION OF TRACT R-1, BLOCK 7004,
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

514 N. Collins Parkway, Suite E, Cape Coral, FL 33909
Phone: (239) 548-7444 Fax: (239) 548-7444
www.fishbase.org

GENERAL NOTES:

1. BASE OF EASEMENT, EXISTING LINE OF TRACT R-1, AS SET FORTH IN PLAT, UNRECORDED, IS SHOWN BY DASHED LINE, NOT TO SCALE, SUBJECT TO EASEMENT AND EASEMENT, NOT TO SCALE, NOT VALID WITHOUT SIGNATURE AND PAPER SEAL OF FLORIDA LICENSED SURVEYOR AND MAPPER (S.H.).

THIS IS NOT A SURVEY



TRACT C-2
BLOCK 7005

PEDESTRIAN WALKWAY EASEMENT
LYING IN TRACT R-1, BLOCK 7004,
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

EXHIBIT NO. _____

SKETCH TO ACCOMPANY DESCRIPTION

LINE TABLE			
LINE	LENGTH	BEARING	
1-4	11.00	N04°54'34"W	
4-8	10.50	S10°22'17"E	
8-6	11.00	S0°54'17"E	
6-7	8.40	S14°55'44"W	
7-8	10.22	S87°02'56"W	

CURVE TABLE			
CURVE	LENGTH	ANGLE / CH. BEARING	CHORD
C-43	111.25	108.30° N87°22'37"W	115.46
C-44	365.89	108.30° N15°53'10"E	279.23
C-45	36.85	115.00° N57°03'11"E	84.71
C-46	30.03	124°40'11"E	28.99
C-47	31.82	170°00' E84°46'11"W	31.75
C-48	36.89	104.30° S87°02'31"W	80.21
C-49	200.02	104.30° S13°31'10"W	200.81
C-50	133.79	200.02° S87°02'56"W	112.46

SCALE
1"=50'

I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE SURVEY AND LEGAL DESCRIPTION REPRESENTED HEREON, MADE UNDER MY DIRECTION ON NOVEMBER 14TH, 2007 IS IN ACCORDANCE WITH MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF LAND SURVEYORS, PURSUANT TO SECTION 472.102 FLORIDA STATUTES.

SOUTHERN ASSOCIATES, INC.
SURVEYING
1111 South Highway 1, Suite 200, Cape Coral, FL 33904
Phone: (239) 541-1111
Fax: (239) 541-1112
www.southassociates.com

Surveyor's Seal

EXHIBIT "C"

Scawall Easement

A TWENTY-FIVE FOOT (25') MAINTENANCE AND ACCESS EASEMENT LYING IN TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR, ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND SITUATED IN SECTION 21, TOWNSHIP 45 SOUTH, RANGE 13 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA.

COMMENCE AT THE SOUTHWEST CORNER OF TRACT R-1, META AT CAPE HARBOUR, FROM SAID POINT OF COMMENCEMENT RUN N87°02'56"E ALONG THE SOUTHERLY LINE OF SAID TRACT R-1 FOR A DISTANCE OF 218.64 FEET TO THE POINT OF BEGINNING, BEING A NON-TANGENT POINT OF CURVATURE OF A 116.54 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S35°04'12"W, HAVING A CENTRAL ANGLE OF 99°49'25", A CHORD BEARING AND DISTANCE OF N50°01'08"W AND 39.96 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 19.98 FEET TO A POINT OF COMPOUND CURVATURE OF A 149.70 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S45°31'46"W, HAVING A CENTRAL ANGLE OF 49°40'27", A CHORD BEARING AND DISTANCE OF H19°51'01"W AND 128.27 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 122.05 FEET TO THE POINT OF COMPOUND CURVATURE OF A 363.23 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS S88°47'27"W, HAVING A CENTRAL ANGLE OF 10°16'25", A CHORD BEARING AND DISTANCE OF N06°55'39"E AND 108.18 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 200.85 FEET TO THE POINT OF COMPOUND CURVATURE OF A 106.97 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N74°02'08"W, HAVING A CENTRAL ANGLE OF 11°23'01", A CHORD BEARING AND DISTANCE OF N21°38'22"E AND 96.59 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 95.75 FEET TO THE POINT OF COMPOUND CURVATURE OF A 536.60 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N58°03'12"W, HAVING A CENTRAL ANGLE OF 10°15'02", A CHORD BEARING AND DISTANCE OF N37°04'19"E, 95.87 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 96.00 FEET TO THE POINT OF COMPOUND CURVATURE OF A 122.76 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N47°10'10"W, HAVING A CENTRAL ANGLE OF 47°40'30", A CHORD BEARING AND DISTANCE OF N66°02'09"E AND 99.73 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 102.15 FEET; THENCE RUN N88°52'29"E FOR A DISTANCE OF 121.01 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 131.81 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, TO WHICH A RADIAL LINE BEARS S02°40'40"W, HAVING A CENTRAL ANGLE OF 13°02'55", A CHORD BEARING AND DISTANCE OF N86°09'20"E AND 29.95 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR 30.02 FEET TO AN INTERSECTION WITH A LINE THAT BEARS S10°22'07"E; THENCE RUN S10°22'07"E FOR A DISTANCE OF 25.00 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 156.81 FOOT RADIUS CURVE CONCAVE TO THE NORTHWEST, TO WHICH A RADIAL LINE BEARS S18°22'07"E, HAVING A CENTRAL ANGLE OF 12°48'55", A CHORD BEARING AND DISTANCE OF S86°02'20"W AND 35.00 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 35.87 FEET; THENCE RUN S09°52'29"W FOR A DISTANCE OF 124.45 FEET TO THE POINT OF CURVATURE OF A 93.35 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N01°01'27"E, HAVING A CENTRAL ANGLE OF 47°40'30", A CHORD BEARING AND DISTANCE OF S66°02'09"W AND 29.62 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 81.35 FEET TO THE POINT OF COMPOUND CURVATURE OF A 511.60 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N47°44'10"W, HAVING A CENTRAL ANGLE OF 16°08'17", A CHORD BEARING AND DISTANCE OF S37°07'42"W AND 90.40 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 90.52 FEET TO THE POINT OF COMPOUND CURVATURE OF A 463.97 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N62°46'36"W, HAVING A CENTRAL ANGLE OF 11°14'05", A CHORD BEARING AND DISTANCE OF S21°36'22"W AND 96.84 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 90.38 FEET TO THE POINT OF COMPOUND CURVATURE OF A 358.23 FOOT RADIUS CURVE CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS N74°58'00"W, HAVING A CENTRAL ANGLE OF 16°27'57", A CHORD BEARING AND DISTANCE OF S06°44'41"W AND 102.60 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 102.95 FEET TO THE POINT OF COMPOUND CURVATURE OF A 115.78 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S81°21'54"W, HAVING A CENTRAL ANGLE OF 50°16'35", A CHORD BEARING AND DISTANCE OF S19°30'12"E AND 91.37 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 101.60 FEET TO THE POINT OF COMPOUND CURVATURE OF A 93.54 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS S44°58'11"W, HAVING A CENTRAL ANGLE OF 31°17'52", A CHORD BEARING AND DISTANCE OF S68°04'46"E AND 49.39 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 50.00 FEET TO AN INTERSECTION WITH A LINE THAT BEARS S14°50'14"W; THENCE RUN S14°50'14"W FOR A DISTANCE OF 4.24 FEET TO AN INTERSECTION WITH THE SOUTHERLY LINE OF TRACT R-1; THENCE RUN ALONG SAID SOUTHERLY LINE S87°02'56"W FOR A DISTANCE OF 41.50 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 17,160 sq. ft. OR 0.39 ACRES, MORE OR LESS.

TWENTY-FIVE FOOT (25') MAINTENANCE AND
ACCESS EASEMENT

A PORTION OF TRACT R-1, BLOCK 7004,
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

EXHIBIT

SKETCH TO ACCOMPANY DESCRIPTION

TWENTY-FIVE FOOT (25') MAINTENANCE AND ACCESS EASEMENT

LYING IN TRACT R-1, BLOCK 7004,
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE
PUBLIC RECORDS OF LEE COUNTY, FLORIDA

CURVE	LENGTH	RADIUS	CH. BEARING	CHORD	DELTA
C-1	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-2	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-3	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-4	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-5	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-6	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-7	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-8	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-9	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-10	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-11	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-12	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-13	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-14	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-15	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-16	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-17	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-18	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-19	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-20	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-21	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-22	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-23	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-24	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-25	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-26	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-27	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-28	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-29	33.91	116.9	N89°52'39"E	33.91	84°07'21"
C-30	33.91	116.9	N89°52'39"E	33.91	84°07'21"

CURVE	LENGTH	BEARING
C-1	33.91	N89°52'39"E
C-2	33.91	N89°52'39"E
C-3	33.91	N89°52'39"E
C-4	33.91	N89°52'39"E
C-5	33.91	N89°52'39"E
C-6	33.91	N89°52'39"E
C-7	33.91	N89°52'39"E
C-8	33.91	N89°52'39"E
C-9	33.91	N89°52'39"E
C-10	33.91	N89°52'39"E
C-11	33.91	N89°52'39"E
C-12	33.91	N89°52'39"E
C-13	33.91	N89°52'39"E
C-14	33.91	N89°52'39"E
C-15	33.91	N89°52'39"E
C-16	33.91	N89°52'39"E
C-17	33.91	N89°52'39"E
C-18	33.91	N89°52'39"E
C-19	33.91	N89°52'39"E
C-20	33.91	N89°52'39"E
C-21	33.91	N89°52'39"E
C-22	33.91	N89°52'39"E
C-23	33.91	N89°52'39"E
C-24	33.91	N89°52'39"E
C-25	33.91	N89°52'39"E
C-26	33.91	N89°52'39"E
C-27	33.91	N89°52'39"E
C-28	33.91	N89°52'39"E
C-29	33.91	N89°52'39"E
C-30	33.91	N89°52'39"E

I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE SKETCH
AND LEGAL DESCRIPTION REPRESENTED HEREIN, MADE UNDER MY DIRECTION ON
OCTOBER 28TH, 2007 IS IN ACCORDANCE WITH MINIMUM TECHNICAL STANDARDS AS
SET FORTH BY THE FLORIDA BOARD OF LAND SURVEYORS, PURSUANT TO SECTION
472.007 FLORIDA STATUTES.

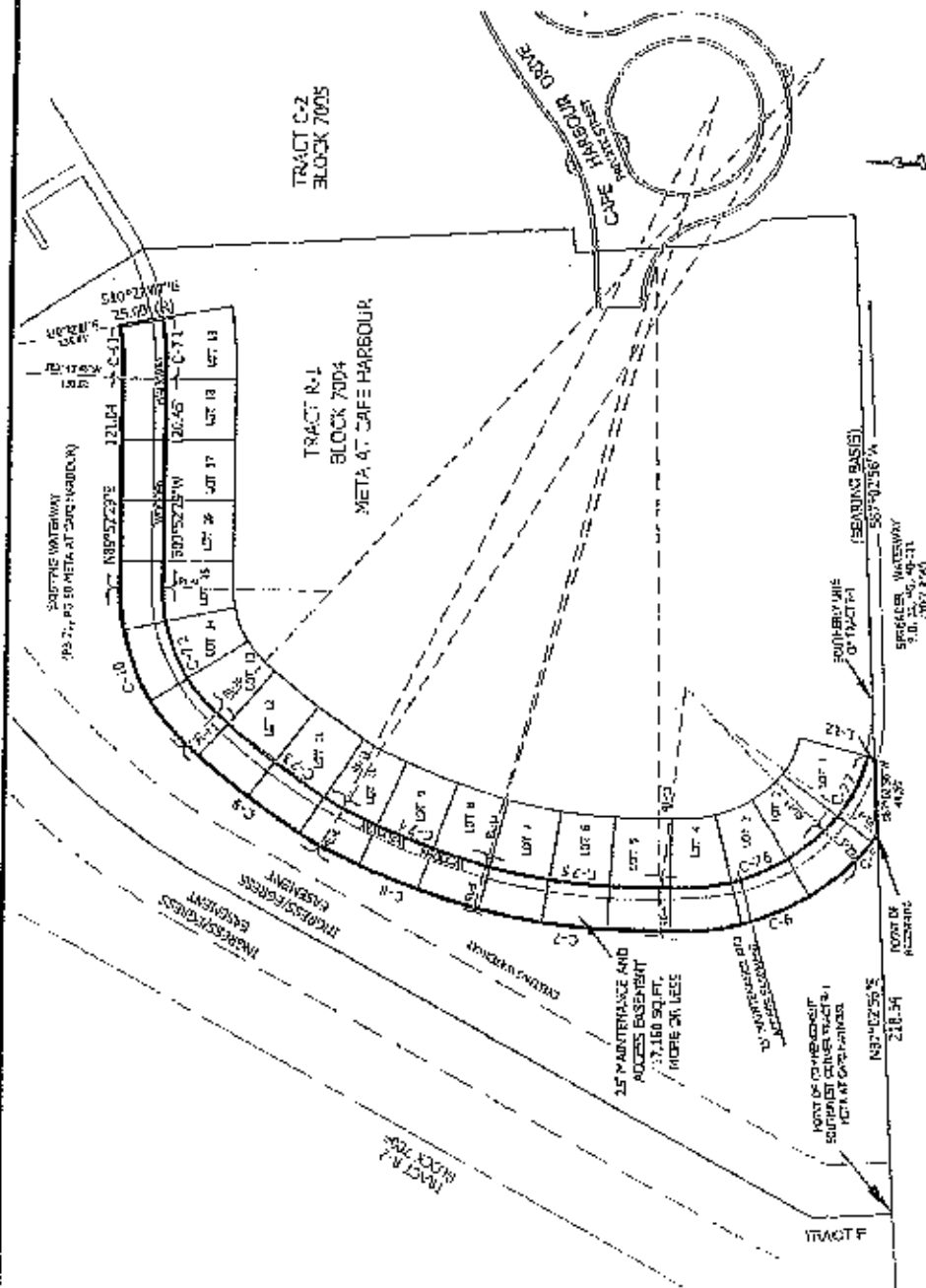
STOUTEN
ASSOCIATES, INC.
LAND SURVEYORS
10000 W. US HWY 90, SUITE 100
FORT MYERS, FL 33907
TEL: 941-336-1111
FAX: 941-336-1112
WWW.STOUTENASSOCIATES.COM

PAGE 1 OF 2

SCALE
1"=80'

THIS IS NOT A SURVEY

- GENERAL NOTES:
1. BASED ON PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.
 2. UNDEVELOPED STRUCTURES, IF ANY, ARE SHOWN AS EXISTING.
 3. SUBJECT TO EASEMENTS AND INTERFERENCES OF RECORD.
 4. NOT VALID WITHOUT SIGNATURE AND SEAL OF LICENSED SURVEYOR.



"EXHIBIT I"

Easement Agreement Front and Back Set Backs

This instrument was prepared by:
Julie M. Drake, Esquire
Bolesius Truxton, PA
12800 University Drive, Suite 350
Fort Myers, Florida 33907

INSTR # 2009000096429, Pages 16
Doc Type EAS, Recorded 04/15/2009 at 09:16 AM
Charlie Green, Lee County Clerk of Circuit Court
Rec. Fee \$137.50
Deputy Clerk DMAYS
#5

EASEMENT AGREEMENT

(Frontage and Set-Back)

This Easement Agreement (referred to as the "Agreement") is made this 3rd day of April, 2009, by Realmark Cape Marina, LLC, a Florida limited liability company (referred to as the "Realmark") and The Funky Fish Houses at Cape Harbour Homeowner's Association, Inc., a Florida not-for-profit corporation (the "Association")

Preliminary Statement

Realmark is the owner of that certain real property situate, lying and being in Lee County, Florida, as more particularly described on Exhibit "A" hereto (referred to as the "Property").

The Property is adjacent to the Plat of Waterfront at Cape Harbour, recorded as Instrument Number 2008000125434 in the Public Records of Lee County, Florida, consisting of nineteen (19) residential lots (the "Lots", and each being referred to herein as a "Lot").

Realmark desires to provide an easement to the Association over, through and across a portion of the Property for access to the Lots and for the construction, maintenance and repair of utilities and landscaping to service the Lots.

Realmark further desires to provide an easement to the Association over, through and across a portion of the Property for side set-back requirement relief purposes, and ingress and egress to the Property.

The Association desires to obtain an easement for Realmark over, through and across the Property for the purposes referenced herein.

NOW THEREFORE, in consideration of the sum of Ten and no/100 (\$10.00) Dollars, and other good and valuable consideration the receipt an sufficiency of which are hereby acknowledged, the parties have agreed, as follows:

1. Preliminary Statement. The Preliminary Statement is true and correct and, by this reference is incorporated into and made part of this Agreement.

2. Grant of Easements.

a. Frontage Easement. Realmark hereby grants a five (5) foot perpetual non-exclusive easement in favor of the Association, and the Association's members, their family members and guests, together with permitted invitees, licensees, tenants, employees, agents, contractors, successors, and assigns access to the Lots for the construction, maintenance and repair of utilities and landscaping to service the Lots over, through and across that portion of the Property, which is described on Exhibit "B" hereto (the "Frontage Easement"). The Frontage Easement shall run with the land, shall inure to the benefit of the Association and its members.

b. Set-back Easement. Realmark hereby grants a six (6) foot perpetual non-exclusive easement in favor of the Association, and the Association's members, their family members and guests, together with permitted invitees, licensees, tenants, employees, agents, contractors, successors, and assigns for side set-back requirement relief purposes and ingress and egress over through and across those certain portions of the Property, as more particularly described on Exhibit "C" hereto (the "Set-Back Easement"). The Set-Back Easement shall run with the land, shall inure to the benefit of the Association and its members.

3. Right to Relocate. Realmark shall have the right to relocate the Frontage Easement and the Set-Back Easement, from time to time, within the Property in accordance with the requirements of any and all applicable governmental authority.

4. Maintenance Obligations. The Association shall be responsible for the maintenance and repair of the Frontage Easement and the Set-Back Easement, including but not limited to, any improvements located with the Frontage Easement or the Set-Back Easement. In the event that the Association shall fail to perform any required maintenance, within thirty (30) days after written notice, then Realmark shall be entitled to reimbursement from the Association for the maintenance, within ten (10) days after presentation of copies of appropriate invoices for such costs and expenses. Any payment not made within thirty (30) days from the date when due shall bear interest at the rate of twelve (12%) percent per annum from the date when due and paid in full.

5. Insurance. Each party shall be responsible at its own expense for maintaining general liability and other insurance to cover such risks as they may determine to be appropriate.

6. Term and Amendment. This Easement shall become effective upon its recordation in the Public Records of Lee County, Florida, and shall run with the land, regardless of whether specifically mentioned in any subsequent deed or conveyance of all or a part of the Property. This Easement may be amended or modified only by an instrument signed by the all of the owners of the Property. No amendment shall become effective prior to a duly executed and acknowledged copy being recorded in the Public Records of Lee County, Florida.

7. Notices. Any notice required or permitted by this Agreement shall be given or made in writing and shall be secured personally by messenger or courier service, or mailed in the United States by prepaid, registered or certified mail, return receipt requested, to each party as follows:

If to Realmark Homes, LLC

Realmark Homes, LLC
5789 Cape Harbour Drive
Cape Coral, Florida 33914
Attention: Craig Dearden

If to the Association

The Funky Fish Houses at Cape
Harbour Homeowner's Association
5789 Cape Harbour Drive
Cape Coral, Florida 33914
Attention: Craig Dearden

8. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public use or purpose whatsoever.

9. Successors and Assigns. The Easement shall inure to the benefit of, and be binding upon, Realmark and its respective successors and/or assigns.

10. Miscellaneous.

(a) Entire Agreement. This Agreement constitutes the entire agreement by and between parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, both written and oral, by and between the parties hereto with respect to such subject matter. No representations, warranties or agreements have been made or, if made, have been relied upon by either party, except as specifically set forth herein. This Agreement may not be amended or modified in any way except by a written instrument executed by each party hereto.

(b) Binding Effect. All terms and provisions of this Agreement shall be binding upon, inure for the benefit of and be enforceable by and against the parties hereto and their respective personal or other legal representatives, heirs, successors and permitted assigns.

(c) No Waivers. No waiver by either party shall be effective unless set forth in a written instrument signed by a duly authorized officer or representative of the party to be charged with such waiver. Further, the waiver by either party of the prompt and complete performance, or breach or violation, of any provision of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach or violation, and the waiver by either party of the exercise of any right or remedy that it may possess shall not operate as, nor be construed to be, the waiver of such right or remedy by any other party or parties or a

bar to the exercise of such right or remedy by such party or parties upon the occurrence of any subsequent breach or violation.

(d) Headings. The article headings in this Agreement are for convenient reference only and shall not have the effect of modifying or amending the expressed terms and provisions of this Agreement, nor shall they be used in connection with the interpretation hereof.

(e) Pronouns; Gender. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the personal liability or obligation with respect to same.

(f) Interpretation. Unless the context otherwise requires, the use of the singular shall include the plural and vice versa. The headings used herein are for convenience only and shall not be given any weight in interpreting or construing the substantive provisions hereof.

(g) Time. Time shall be of the essence. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next full business day.

(h) Severability. The invalidity of any provision of this Agreement shall not affect the enforceability of the remaining provisions of this Agreement or any part hereof. In the event that any provision of this Agreement shall be declared invalid by a court of competent jurisdiction, the parties agree that such provision shall be construed, to the extent possible, in a manner which would render the provision valid and enforceable or, if the provision cannot reasonably be construed in a manner which would render the provision valid and enforceable, then this Agreement shall be construed as if such provision had not been inserted.

(i) Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida without regard to principles of conflicts or choice of laws.

(j) Jurisdiction and Venue. Each of the parties irrevocably and unconditionally: (i) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Lee County; (ii) consents to the jurisdiction of each such court in any suit, action or proceeding; and (iii) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts.

(k) Attorney's Fees and Costs. In the event of any litigation arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including without limitation, all such fees, costs and expenses

incident to pre-trial, trial, appellate, bankruptcy, post-judgment and alternative dispute resolution proceedings), incurred in that suit, action or proceeding, in addition to any other relief to which such party is entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, expert witness fees, administrative costs and all other charges billed by the attorney to the prevailing party.

(l) Trial by Jury. The parties hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the other concerning the interpretation, construction, validity, enforcement or performance of this Agreement or any other agreement or instrument executed in connection with this Easement Agreement.

(m) Exhibits. All exhibits referenced herein and attached hereto are incorporated herein by this reference.

IN WITNESS WHEREOF, Realmark has executed this Easement of Easement and on this 3 of April, 2009.

Signed, sealed and delivered
in the presence of:

REALMARK:

Realmark Cape Marina, LLC,
a Florida limited liability company

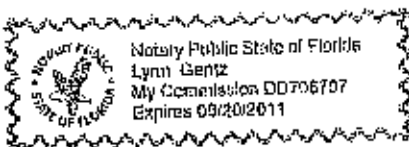
Aileen Gibbs
WITNESS #1 Aileen Gibbs

By: Craig A. Dearden
Craig A. Dearden, Vice President

Jane Kirkman
WITNESS #2 Jane Kirkman

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was sworn to and acknowledged before me this 3rd day April, 2009, by Craig A. Dearden, as Vice President of Realmark Cape Marina, LLC, a Florida limited liability corporation. He (☒) is personally known to me or () has produced _____ identification.



Lynn Gentz
NOTARY PUBLIC [NOTARY SEAL]
PLEASE PRINT OR TYPE NAME OF NOTARY

My Commission Expires: 08/20/2011

The Funky Fish Houses at Cape Harbour
Homeowner's Association, Inc.,
a Florida not-for-profit corporation

Sign: Aileen Gibbs
Print Name: Aileen Gibbs

Sign: James Kirkman
Print Name: James Kirkman

State of Florida

County of Lee

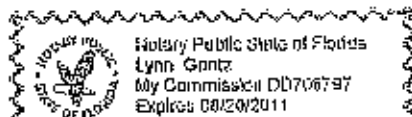
By: Craig A. Dearden
Craig A. Dearden, President

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Craig A. Dearden, as President of Funky Fish Houses Homeowner's Association, Inc., a Florida not-for-profit corporation. He (☒) is personally known to me or (☐) has produced _____ as identification.

My commission expires: 08/30/2011

Notary Public

Print Notary Name: Lynn Craste



PDF GENERATED BY: GUYANA JUDICIAL OFFICE, KAYES/ST. PETER (160007) | Doc# FINAL.FBI.DOC5 | untagged | 11/02/2024

Mortgage Consent

Regions Bank, as successor by merger to AmSouth Bank, N.A. being the owner and holder of a Mortgage dated October 18, 2005, which was recorded as Instrument Number 2005000083142, in the Public Records of Lee County, Florida, encumbering the Property, hereby consents to the foregoing Easement of Easement.

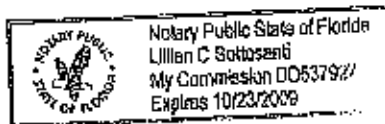
Dated this th 13 day of March, 200⁹8.

Regions Bank

By: [Signature]
Print Name: Russell C. Phillips
Title: Vice President

State of Florida,
County of Collier) ss

The foregoing instrument was acknowledged before me this th 13 day of March, 200⁹8 by Russell L. Phillips, as V P of Regions Bank. He/She () is personally known to me or () has produced _____ as identification.



Lillian C. Sottosanti
Notary Public, State of Florida
Print Name:
My commission expires:

Index of Exhibits

- A. The Property**
- B. Frontage Easement**
- C. Set-Back Easement**

Exhibit "A"

The Property

Tract R-1 of Meta at Cape Harbour, according to the plat thereof, recorded in Plat Book 71 at Page 74 of the Public Records of Lec County, Florida.

Exhibit "B"

Frontage Easement

B

LEGAL DESCRIPTION:

A COMMON AREA AND UTILITY EASEMENT LYING IN A PORTION OF TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND SITUATED IN SECTION 21, TOWNSHIP 45 SOUTH, RANGE 23 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA.

COMMENCE AT THE SOUTHWESTERLY CORNER OF SAID TRACT R-1, META AT CAPE HARBOUR, THENCE RUN N87°02'56"E ALONG THE SOUTHERLY LINE OF SAID TRACT R-1 FOR A DISTANCE OF 282.38 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF TRACT R-1 RUN N02°57'04"W FOR A DISTANCE OF 42.12 FEET TO THE NORTHEAST CORNER OF LOT 1, BLOCK 8078, WATERFRONT AT CAPE HARBOUR SUBDIVISION AND THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING, SAID POINT BEING THE BEGINNING OF A NON-TANGENT 51.56 FOOT RADIUS CURVE CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS N32°30'29"E, HAVING A CENTRAL ANGLE OF 31°56'09", A CHORD BEARING AND DISTANCE OF N61°31'26"W AND 78.37 FEET;

THE FOLLOWING (B) EIGHT COURSES ARE COINCIDENT WITH THE EXTERIOR BOUNDARY OF THE PLAT OF WATERFRONT AT CAPE HARBOUR, AS RECORDED IN INSTRUMENT NUMBER 2008000125434, OF THE LEE COUNTY PUBLIC RECORDS DEPARTMENT:

RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 28.74 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 75.70 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST TO WHICH A RADIAL LINE BEARS N45°21'31"E, HAVING A CENTRAL ANGLE OF 52°00'11", A CHORD BEARING AND DISTANCE OF N18°38'24"W AND 66.44 FEET. RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 68.78 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 318.23 FOOT RADIUS CURVE, CONCAVE TO THE EAST TO WHICH A RADIAL LINE BEARS N88°05'18"E, HAVING A CENTRAL ANGLE OF 16°53'07", A CHORD BEARING AND DISTANCE OF N06°31'52"E AND 93.44 FEET. RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 93.78 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 421.97 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST TO WHICH A RADIAL LINE BEARS S73°57'56"E, HAVING A CENTRAL ANGLE OF 10°57'37", A CHORD BEARING AND DISTANCE OF N21°30'52"E AND 80.60 FEET. RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 80.72 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 471.60 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS S57°44'06"E, HAVING A CENTRAL ANGLE OF 9°55'56", A CHORD BEARING AND DISTANCE OF N37°13'52"E AND 81.65 FEET. RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 81.75 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 57.76 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS S47°48'10"E, HAVING A CENTRAL ANGLE OF 47°40'38", A CHORD BEARING AND DISTANCE OF N66°02'09"E AND 46.69 FEET. RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 48.06 FEET. RUN N89°52'29"E FOR A DISTANCE OF 119.61 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 196.81 FOOT RADIUS CURVE TO WHICH A RADIAL LINE BEARS N02°10'13"E, CONCAVE TO THE NORTH, HAVING A CENTRAL ANGLE OF 12°32'20", A CHORD BEARING AND DISTANCE OF N85°54'03"E AND 42.99 FEET. RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 43.07 FEET; THENCE RUN S10°22'07"E FOR A DISTANCE OF 5.00 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 201.81 FOOT RADIUS CURVE, CONCAVE TO THE NORTH, TO WHICH A RADIAL LINE BEARS N50°22'07"W, HAVING A CENTRAL ANGLE OF 12°30'37", A CHORD BEARING AND DISTANCE OF S85°53'11"W AND 43.98 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 44.06 FEET; THENCE RUN S89°52'29"W FOR A DISTANCE OF 119.51 FEET TO THE POINT OF CURVATURE OF A 52.76 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST, HAVING A CENTRAL ANGLE OF 47°40'38", A CHORD BEARING AND DISTANCE OF S66°02'09"W AND 42.64 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 43.90 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 466.60 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS S47°48'10"E, HAVING A CENTRAL ANGLE OF 9°54'14", A CHORD BEARING AND DISTANCE OF S37°14'43"W AND 80.55 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 80.65 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 416.97 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS S63°02'13"E, HAVING A CENTRAL ANGLE OF 10°55'20", A CHORD BEARING AND DISTANCE OF S21°30'07"W AND 79.37 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 79.49 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 313.23 FOOT RADIUS CURVE, CONCAVE TO THE SOUTHEAST, TO WHICH A RADIAL LINE BEARS S75°02'06"E, HAVING A CENTRAL ANGLE OF 10°57'07", A CHORD BEARING AND DISTANCE OF S06°29'21"W AND 92.34 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 92.67 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 70.78 FOOT RADIUS CURVE, CONCAVE TO THE EAST, TO WHICH A RADIAL LINE BEARS S82°18'52"E, HAVING A CENTRAL ANGLE OF 52°17'40", A CHORD BEARING AND DISTANCE OF S18°27'42"E AND 62.38 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 64.60 FEET TO A NON-TANGENT POINT OF CURVATURE OF A 46.56 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST TO WHICH A RADIAL LINE BEARS N44°23'43"E, HAVING A CENTRAL ANGLE OF 32°05'16", A CHORD BEARING AND DISTANCE OF S61°39'09"E AND 25.74 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 26.08 FEET; THENCE RUN S14°50'44"W FOR A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 2,789 sq. ft. or 0.06± ACRES.

DESCRIPTION TO ACCOMPANY SKETCH

COMMON AREA AND UTILITY EASEMENT
LYING IN A PORTION OF TRACT R-1, BLOCK 7004,
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC
RECORDS OF LEE COUNTY, FLORIDA

STOUTEN & ASSOCIATES, INC.
SURVEYING & MAPPING

2744 N. U.S. Highway 90, Suite E, Cape Coral, FL 33904
Phone: (239) 554-8888 Fax: (239) 554-8888
www.stouten.com/stouten239

CURVE	DELTA	LENGTH	RADIUS	CH. BEARING	CHORD
C-1	21°55'11"	28.74	51.58	146°31'22W	56.97
C-2	21°55'11"	69.28	71.95	140°51'22W	56.94
C-3	18°53'37"	95.76	81.83	148°51'22W	56.44
C-4	17°53'37"	87.72	421.17	137°51'22W	50.84
C-5	23°55'58"	87.72	271.23	137°51'22W	61.03
C-6	4°40'43"	43.06	37.76	148°51'22W	46.96
C-7	12°53'23"	43.07	145.81	148°51'22W	46.96
C-8	17°53'37"	41.05	201.81	158°51'22W	46.34
C-9	17°53'37"	41.05	52.6	150°10'53W	46.34
C-10	15°54'41"	81.67	44.83	148°51'22W	46.34
C-11	25°52'20"	72.46	148.93	151°28'57W	48.82
C-12	20°55'11"	91.61	311.23	150°51'22W	92.51
C-13	21°55'11"	64.84	70.78	140°51'22W	56.94
C-14	33°02'01"	36.06	46.96	155°37'26W	76.54

LINE TABLE	
LINE	LENGTH
BEARING	
WATER	1025
WATER	2
WATER	1025

LINE TABLE		BRANCH
LINE	LINE	
R1-1	21.80	W121125.2
R1-2	72.30	W411217.1
R1-3	308.23	W411217.1
R1-4	421.40	W411217.1
R1-5	471.60	W411217.1
R1-6	57.30	W411217.1
R1-7	57.30	W411217.1
R1-8	105.81	W411217.1
R1-9	101.81	W411217.1
R1-10	101.81	W411217.1
R1-11	101.81	W411217.1
R1-12	101.81	W411217.1
R1-13	101.81	W411217.1
R1-14	101.81	W411217.1
R1-15	101.81	W411217.1
R1-16	101.81	W411217.1
R1-17	101.81	W411217.1
R1-18	101.81	W411217.1
R1-19	101.81	W411217.1
R1-20	101.81	W411217.1
R1-21	101.81	W411217.1
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R1-24	101.81	W411217.1
R1-25	101.81	W411217.1
R1-26	101.81	W411217.1
R1-27	101.81	W411217.1
R1-28	101.81	W411217.1
R1-29	101.81	W411217.1
R1-30	101.81	W411217.1
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R1-52	101.81	W411217.1
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R1-75	101.81	W411217.1
R1-76	101.81	W411217.1
R1-77	101.81	W411217.1
R1-78	101.81	W411217.1
R1-79	101.81	W411217.1
R1-80	101.81	W411217.1
R1-81	101.81	W411217.1
R1-82	101.81	W411217.1
R1-83	101.81	W411217.1
R1-84	101.81	W411217.1
R1-85	101.81	W411217.1
R1-86	101.81	W411217.1
R1-87	101.81	W411217.1
R1-88	101.81	W411217.1
R1-89	101.81	W411217.1
R1-90	101.81	W411217.1
R1-91	101.81	W411217.1
R1-92	101.81	W411217.1</

SKETCH TO ACCOMPANY DESCRIPTION

COMMON AREA AND UTILITY EASEMENT
LYING IN A PORTION OF TRACT R-1, BLOCK 7004,
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC
RECORDS OF LEE COUNTY, FLORIDA

I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE SKETCH AND LEGAL DESCRIPTION REPRODUCED HEREON, MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND IN ACCORDANCE WITH THE DIRECTOR'S ORDER OF MARCH 2, 1989, IS IN ACCORDANCE WITH THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF LAND SURVEYORS, PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

**STOLZEN
SAROFINE**

PAGE 1 OF 2

THIS IS NOT A SURVEY

CONFIDENTIAL NOTED

- [illegible]

PL KJ 1:1-1 162523 40 401 1601113 日本 01:00

Exhibit "C"
Set-Back Easement

C

LEGAL DESCRIPTION:

SETBACK EASEMENT 1, LYING IN A PORTION OF TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND SITUATED IN SECTION 21, TOWNSHIP 45 SOUTH, RANGE 23 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA.

COMMENCE AT THE SOUTHWESTERLY CORNER OF SAID TRACT R-1, META AT CAPE HARBOUR. THENCE RUN N87°02'56"E ALONG THE SOUTHERLY LINE OF SAID TRACT R-1 FOR A DISTANCE OF 263.15 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, WATERFRONT AT CAPE HARBOUR ACCORDING TO INST#7008000125434 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE LEAVING SAID SOUTHERLY LINE OF TRACT R-1 RUN N14°50'44"E ALONG THE EASTERLY LINE OF SAID LOT 1 FOR A DISTANCE OF 5.51 FEET TO THE POINT OF BEGINNING, ALSO BEING THE POINT OF INTERSECTION OF THE SAID EASTERLY LINE AND THE WATERWARD FACE OF A CONCRETE SEAWALL. FROM SAID POINT OF BEGINNING CONTINUE RUNNING N14°50'44"E ALONG SAID EASTERLY LINE FOR A DISTANCE OF 38.74 FEET TO NORTHEASTERLY CORNER OF SAID LOT 1, ALSO BEING THE NON-TANGENT POINT OF CURVATURE OF A 51.56 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS N12°32'47"E, HAVING A CENTRAL ANGLE OF 6°42'14", A CHORD BEARING AND DISTANCE OF S80°48'20"E AND 6.03 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 6.03 FEET; THENCE RUN S14°50'44"W FOR A DISTANCE OF 39.15 FEET TO THE WATERWARD FACE OF A CONCRETE SEAWALL, ALSO BEING THE NON-TANGENT POINT OF CURVATURE OF A 57.92 FOOT RADIUS CURVE, CONCAVE TO THE NORTHEAST, TO WHICH A RADIAL LINE BEARS N11°19'58"E, HAVING A CENTRAL ANGLE OF 3°30'46", A CHORD BEARING AND DISTANCE OF N76°54'39"W AND 6.00 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE, ALSO BEING THE WATERWARD FACE OF SAID SEAWALL FOR A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 233 SQ FT. OR 0.01± ACRES.

LEGAL DESCRIPTION:

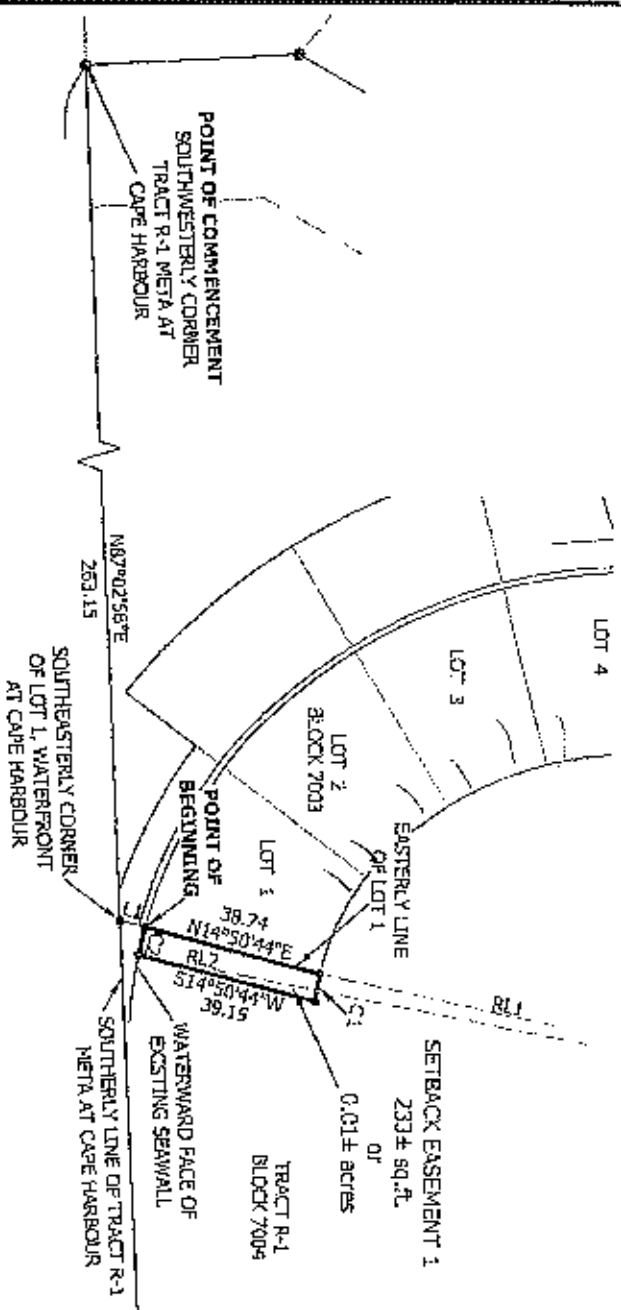
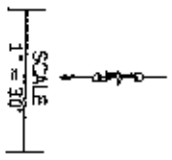
SETBACK EASEMENT 2, LYING IN A PORTION OF TRACT R-1, BLOCK 7004, META AT CAPE HARBOUR ACCORDING TO PLAT BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND SITUATED IN SECTION 21, TOWNSHIP 45 SOUTH, RANGE 23 EAST, CITY OF CAPE CORAL, LEE COUNTY, FLORIDA.

COMMENCE AT THE SOUTHWESTERLY CORNER OF SAID TRACT R-1, META AT CAPE HARBOUR. THENCE RUN N87°02'56"E ALONG THE SOUTHERLY LINE OF SAID TRACT R-1 FOR A DISTANCE OF 542.00 FEET; THENCE LEAVING SAID SOUTHERLY LINE OF TRACT R-1 RUN N82°57'04"W FOR A DISTANCE OF 360.49 FEET TO THE POINT OF BEGINNING, ALSO BEING THE SOUTHEASTERLY CORNER OF LOT 19, WATERFRONT AT CAPE HARBOUR ACCORDING TO INST#7008000125434 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA. FROM SAID POINT OF BEGINNING RUN N10°22'07"W ALONG THE EASTERLY LINE OF SAID LOT 19 FOR A DISTANCE OF 38.67 FEET TO AN INTERSECTION WITH THE WATERWARD FACE OF A CONCRETE SEAWALL, ALSO BEING THE NON-TANGENT POINT OF CURVATURE OF A 158.14 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST, TO WHICH A RADIAL LINE BEARS N12°06'57"W, HAVING A CENTRAL ANGLE OF 2°10'28", A CHORD BEARING AND DISTANCE OF N78°32'39"E AND 6.00 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE, ALSO BEING THE WATERWARD FACE OF SAID SEAWALL, FOR A DISTANCE OF 6.00 FEET; THENCE LEAVING SAID SEAWALL FACE RUN S10°22'07"E FOR A DISTANCE OF 38.60 FEET TO THE NON-TANGENT POINT OF CURVATURE OF A 196.81 FOOT RADIUS CURVE, CONCAVE TO THE NORTHWEST, TO WHICH A RADIAL LINE BEARS N10°22'07"W, HAVING A CENTRAL ANGLE OF 1°44'49", A CHORD BEARING AND DISTANCE OF S78°45'28"W AND 6.00 FEET; THENCE RUN ALONG THE ARC OF SAID CURVE FOR A DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 232 SQ FT. OR 0.01± ACRES.

DESCRIPTION TO ACCOMPANY SKETCH

SETBACK EASEMENTS 1 AND 2
LYING IN A PORTION OF TRACT R-1, BLOCK 7004
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC
RECORDS OF LEE COUNTY, FLORIDA



SKETCH TO ACCOMPANY DESCRIPTION
 SETBACK EASEMENT 1
 LYING IN A PORTION OF TRACT R-1, BLOCK 7004,
 META AT CAPE HARBOUR ACCORDING TO PLAT
 BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC
 RECORDS OF LEE COUNTY, FLORIDA

CURVE TABLE					
CURVE	LENGTH	RADIUS	CH. BEARING	CHORD	DELTA
CL	6.23	51.50	S64°22'07"	6.20	S64°22'07"
CI	5.60	97.22	N75°54'33"W	6.75	S70°46'18"

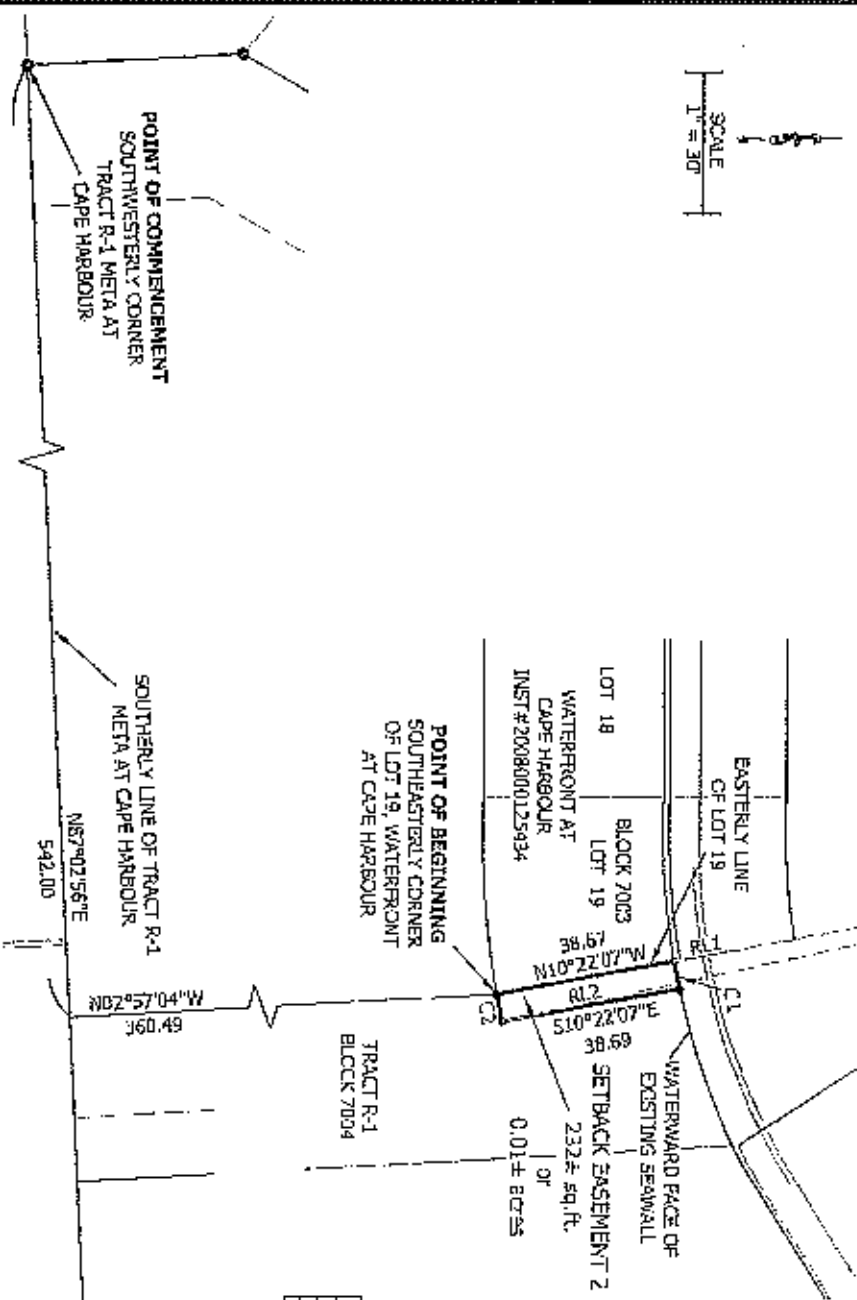
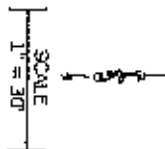
LINE TABLE		
LINE	LENGTH	BEARING
RL1	1.51	S44°50'44\"/>

- GENERAL NOTES:
1. BASE OF BEACHES, EXISTING, LINE OF TRACT R-1 META AT CAPE HARBOUR AS SHOWN ON PLAT.
 2. UNDEVELOPED STRUCTURES, IF ANY, NOT INDICATED.
 3. THIS CERTIFICATION IS FOR LOTS AS DESCRIBED HEREIN ONLY. IT IS NOT A CERTIFICATION OF TITLE, NOR OF FREEDOM OF ENCUMBRANCES.
 4. NO PLAT WITHOUT SUFFICIENT AND VALID SIGN OF PUBLIC RECORDS, RECORDS, AND PLAT.

THIS IS NOT A SURVEY

STOUTEN ASSOCIATES, INC.
 3015 Highway 90, Suite 100, Cape Coral, FL 33904
 Phone: 239.833.1111
 Fax: 239.833.1112

SEE PAGE 1 OF 3 FOR
 SETBACK EASEMENT
 PLAT BOOK 71, PAGES 74-80



SKETCH TO ACCOMPANY DESCRIPTION
SETBACK EASEMENT 2
LYING IN A PORTION OF TRACT R-1, BLOCK 7004,
META AT CAPE HARBOUR ACCORDING TO PLAT
BOOK 71, PAGES 74 THROUGH 80 OF THE PUBLIC
RECORDS OF LEE COUNTY, FLORIDA

CURVE TABLE					
CURVE	LENGTH	RADIUS	CH. BEARING	CHORD	BE. TO
C1	6.00	158.14	N 10° 22' 07.2" E	6.00	21.0723
C2	6.00	158.14	S 78° 47' 20.0" W	6.00	1.07782

LINE TABLE

LINE	LENGTH	BEARINGS
1-2	305.51	N 12° 58' 27.0\"/>

THIS IS NOT A SURVEY

- GENERAL NOTES:
1. OVERS OF BEGINNING SOUTHWESTERLY CORNER TRACT R-1 META AT CAPE HARBOUR AS INDICATED (P. 74)
 2. UNDESIGNATED STRUCTURES, IF ANY, NOT SHOWN.
 3. THIS CERTIFICATION IS FOR LANDS AS DESCRIBED HEREIN ONLY. IT IS NOT A CERTIFICATION OF TITLE, ZONING OR FREEDOM OF ENCUMBRANCES.
 4. NOT VALID WITHOUT SIGNATURE AND RANDED SEAL OF FLORIDA LICENSED SURVEYOR AND PRACTICE (P. 74)

STOUTEN ASSOCIATES, INC.
SURVEYING
10000 W. US Highway 1, Suite 100, Cape Coral, FL 33904
Phone: (239) 549-1111 Fax: (239) 549-1112

Surveyed by: [Signature]
Date: 11/11/2011

"EXHIBIT J"

Termination of Access Easement Agreement

This instrument was prepared by:
Julie M. Drake, Esquire
Bolaños Truxton, PA
12800 University Drive, Suite 350
Fort Myers, Florida 33907

INSTR # 2008000096425, Pages 3
Doc Type TER, Recorded 04/15/2009 at 09:16 AM,
Charlie Green, Lee County Clerk of Circuit Court
Rec. Fee \$27.00
Deputy Clerk DMAYS
#1

Termination of Access Easement Agreement

This Termination of Access Easement Agreement ("Termination") is made effective as of the 3rd day of April, 2009 (the "Termination Date"), between Realmark Cape Marina, LLC, a Florida limited liability company ("RCM") and Realmark META, LLC, a Florida limited liability company ("META").

Preliminary Statement

RCM and META entered into that certain Access Easement Agreement dated January 30, 2008 and recorded as Instrument Number 2008000030612 in the Public Records of Lee County, Florida, pursuant to which RCM granted to META the Boardwalk Easement and the Seawall Easement, as defined therein.

RCM and META desire to terminate this Access Easement Agreement.

NOW THEREFORE, in consideration of the sum of Ten and No/100 (\$10.00) Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties have agreed, as follows:

1. Preliminary Statements. The Preliminary Statements are true and correct and, by this reference, are incorporated into and made a part of this Termination.
2. Termination. The parties hereby agree to terminate the Access Easement Agreement.

This Termination has been executed by the parties as of the date first above written.

IN WITNESS WHEREOF, the undersigned have executed this Termination of Access Easement Agreement as of the day and year first above written.

Witnesses:
Sign: [Signature]
Print Name: Hileen Gibbs

Realmark Cape Marina, LLC,
a Florida limited liability company

Sign: [Signature]
Print Name: JANE Kirkman

By: [Signature]
Craig A. Dearden,
Vice President

State of Florida)
County of Lee) ss

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Craig A. Dearden, as Vice President of Realmark Cape Marina, LLC, a Florida limited liability company. He (☒) is personally known to me or () has produced _____ as identification.



[Signature]
Notary Public
Print Name: Lynn Gantz
My commission expires: 08/20/2011

Witnesses:
Sign: [Signature]
Print Name: Aileen Gibbs

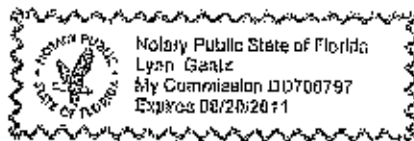
Realmark META, LLC,
a Florida limited liability company

Sign: [Signature]
Print Name: JANE Kirkman

By: [Signature]
Craig A. Dearden,
Vice President

State of Florida)
County of Lee) ss

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Craig A. Dearden, as Vice President of Realmark META, LLC, a Florida limited liability company. He (✓) is personally known to me or () has produced _____ as identification.



[Signature]
Notary Public
Print Name: Lynn Gantz
My commission expires: 08/20/2011

This instrument was prepared by:
Julie M. Drake, Esquire
Bolton's Trustee, PA
12800 University Drive, Suite 350
Fort Myers, Florida 33907

INSTR # 2009000098427, Pages 3
Doc Type TER, Recorded 04/15/2009 at 09:16 AM,
Charlie Green, Lee County Clerk of Circuit Court
Rec. Fee \$27.00
Deputy Clerk DMAYS
#3

Termination of Declaration of Easements

This Termination of Declaration of Easements ("Termination") is made effective as of the 3rd day of April, 2009 (the "Termination Date"), by Realmark Cape Marina, LLC, a Florida limited liability company (the "Declarant").

Preliminary Statement

Declarant is the owner of that certain real property situate, lying and being in Lee County, Florida, as more particularly described on Exhibit "A" hereto (referred to as the "Property").

Declarant desires to terminate that certain Declaration of Easement dated January 30, 2008 and recorded as Instrument Number 2008000030654 in the Public Records of Lee County, Florida, pursuant to which Declarant granted perpetual non-exclusive easements for vehicular ingress and egress and for vehicular parking over portions of the property in favor of each owner of a Lot, as defined therein. Declarant is the owner of all of the Lots.

NOW THEREFORE, the Declarant declares that:

1. Preliminary Statements. The Preliminary Statements are true and correct and, by this reference, are incorporated into and made a part of this Termination.
2. Termination. Declarant hereby terminates the Declaration of Easement.

This Termination has been executed by the parties as of the date first above written.

IN WITNESS WHEREOF, Declarant has executed this Termination of Declaration of Easement as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

DECLARANT:

Witnesses:
Sign: [Signature]
Print Name: Aileen Gibbs

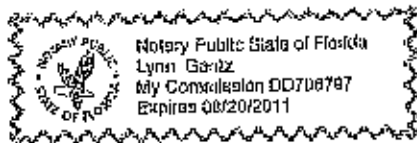
Realmark Cape Marina, LLC,
a Florida limited liability company

Sign: [Signature]
Print Name: JANE Kirkman

By: [Signature]
Craig A. Dearden,
Vice President

State of Florida)
) ss
County of Lee)

The foregoing instrument was acknowledged before me this 3rd day of April, 2009, by Craig A. Dearden, as Vice President of Realmark Cape Marina, LLC, a Florida limited liability company. He (☒) is personally known to me or () has produced _____ as identification.



[Signature]
Notary Public
Print Name: Lynn Gantz
My commission expires: 08/20/2011

"EXHIBIT K"

Budget