

**AMENDED AND RESTATED DECLARATION OF**  
**COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**MARINA CLUB WATERFRONT**  
**TRAVIS COUNTY, TEXAS**

**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
MARINA CLUB WATERFRONT**

REFERENCE IS HEREBY MADE to that certain Declaration of Covenants, Conditions and Restrictions for Marina Club Waterfront filed at Volume 12462 Page 1503 of the Real Property Records of Travis County, Texas (the "Original Declaration").

7 WHEREAS section 6.3 of the Original Declaration provides that the Original Declaration may be amended upon the approval of two-thirds (2/3rds) of the Members, two-thirds (2/3rds) of the Marina Club Condominium unit owners, and two-thirds (2/3rds) of the Lakeside Condominium unit owners; and

WHEREAS the Presidents of the Association, the Marina Club Homeowners Association, and the Lakeside Homeowners Association have executed this instrument to certify that the requisite votes and approvals required for amending the Original Declaration as provided herein have been obtained;

THEREFORE the Original Declaration is hereby AMENDED and RESTATED as provided below. All prior language and provisions contained in the Original Declaration are hereby DELETED and REPLACED by the language and provisions contained in this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Marina Club Waterfront, except for the Exhibits to the Original Declaration, which are incorporated herein as provided below in Article I.

Declaration. This is an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Marina Club Waterfront. The property subject to this Declaration consists of all of Lot 3, Phase 4, Section 3-A, Davenport Ranch Subdivision, according to the plat in Volume 86, Page 105A, B, and C, Plat Records of Travis County, Texas which lot currently contains six different separate Boatdocks containing a total of 48 covered Boatslips.

Covenant running with the land. The following terms, covenants, conditions, easements, restrictions, uses, limitations, and obligations shall be deemed to run with the Property described below and shall be binding upon any person acquiring or owning an interest in the Property and their successors and assigns.

7 Apurtenance to condominium unit ownership. The right to rent a boatslip in the Marina Club Waterfront is rights and obligations of membership in Association, including the right to exclusive use and control of one or more Boatslips, are an apurtenance to, and cannot be separated from, ownership of a condominium dwelling unit in the.

(1) Marina Club Condominiums which is governed by the Declaration of Covenants, Conditions, and Restrictions for the Marina Club Condominiums -- Revised 1995, recorded in Volume 12437, Page 0004, Real Property Records of Travis County, Texas; and

(2) Lakeside Condominiums which is governed by the Declaration of Covenants, Conditions, and Restrictions for Lakeside Condominiums, recorded in Volume 12378, Page 1598, Real Property Records of Travis County, Texas

Marina not a condominium project. Marina Club Waterfront, as described in ~~the~~ this Amended and Restated Declaration, is not a condominium project. The Marina Club Waterfront Association, Inc. (the "Association"), which governs the ~~property~~ Property described in the attached Exhibit A, is a completely separate entity from:

(1) the Marina Club Homeowners Association, Inc. which governs the property subject to the Declaration of Covenants, Conditions, and Restrictions for the Marina Club Condominiums -- Revised 1995, described above; and

(2) the Lakeside Homeowners Association, Inc. which governs the property subject to the Declaration of Covenants, Conditions, and Restrictions for Lakeside Condominiums, described above

## ARTICLE I. DEFINITIONS

1.1 DEFINITIONS AND TERMS. As used in this agreement, the following terms shall have the respective meanings set forth after them unless the context shall expressly provide otherwise:

- a. "Association" shall refer to "The Marina Club Waterfront Association, Inc."
- b. "Board" or "Board of Directors" shall refer to the Board of Directors of the Association.
- c. "Boatdock(s)" shall refer to any one or more of the six separate boatdocks identified on the map of the Project attached hereto as Exhibit B and made a part hereof, and any additional boatdock(s) that may be constructed on the Property in the future.
- d. "Boat slip" shall mean a slip in one of the Boatdocks shown on the Map in Exhibit B. Boatdocks, each of which is identified more particularly on Exhibit I hereto.
- e. "Bylaws" means the Bylaws of the Association.
- f. "Condominium Unit Owner" means the owner of a condominium unit in the Marina Club Condominiums or Lakeside Condominiums.
- g. "Declarant" shall mean Marina Club Waterfront Association, Inc. a Texas nonprofit corporation, or its successors or assigns.
- ~~g.~~ "Declaration" ~~h.~~ "Declaration" and "Amended and Restated Declaration" shall mean this Declaration instrument, including any exhibits hereto, whether actually attached or incorporated by reference.
- i. "Encroachment Easement" shall mean that easement agreement entered into and existing between the Association and the Lakeside Homeowners Association under which various improvements are permitted to be constructed and exist by members of the Lakeside Homeowners Association on a portion of the Property, a copy of which is attached hereto as Exhibit H.
- ~~h.~~ "Lakeside Condominiums" shall mean the Lakeside Condominium Project, governed by the Declaration of Covenants, Conditions, and Restrictions for Lakeside Condominiums, recorded in Volume 12378, Page 1598, Real Property Records of Travis County, Texas.
- ~~i.~~ "Lakeside Homeowners Association, Inc. shall mean the homeowners association governing the Lakeside Condominiums.
- ~~j.~~ "Majority of Members" shall mean those Members which at the relevant time have over 50% of the votes entitled to be cast by all Members.
- ~~k.~~ "Marina" means the Property described in Exhibit A and all improvements on the Property, including the ~~boatdock facilities~~ Boatdocks, but NOT including any improvements located on the Property that are subject to the Encroachment Lease.
- ~~l.~~ "Marina Club Homeowners Association, Inc." means the homeowners association governing the Marina Club Condominiums.
- ~~m.~~ "Marina Club Condominiums" means the condominium project governed by the Declaration of Covenants, Conditions, and Restrictions for the Marina Club Condominiums -- Revised 1995, recorded in Volume 12437, Page 0004, Real Property Records of Travis County, Texas.

n-p. "Member" means a person, firm, corporation, partnership, association, trust, or other legal entity or any combination thereof, who ~~(1) owns record title to one or more units in the Marina Club Condominiums or Lakeside Condominiums, and (2) is also renting a boat slip from the Association Condominiums and is a member of the related condominium associations.~~

q. "Original Declaration" shall mean the Declaration of Covenants, Conditions and Restrictions for Marina Club Waterfront filed at Volume 12462 Page 1502 of the Real Property Records of Travis County, Texas, including any exhibits thereto.

r. "Plans" and "Maps" mean or include the engineering survey of the land attached as Exhibit B, locating thereon all of the improvements.

p-s. "Property" or "Project" means and includes in the aggregate ~~the land, all of the real property described in Exhibit A, the Boatdocks, and all improvements and structures thereof and thereto, including, without limitation, the Common Elements and all rights, easements, and appurtenances belonging thereto; thereto, but not including any improvements located on the land that area subject to the Encroachment Lease.~~

t. "Rules" shall mean any rule and regulations (which may be styled as community policies or otherwise) that have been or may be adopted by the Board pursuant to section 4.4(a) herein.

~~q. "Waterfront" means the Property.~~ u. "Waterfront" means and includes in the aggregate all of the real property described in Exhibit A, the Boatdocks, and all improvements on the Property, including the boatdock facilities:

~~and structures thereof and thereto, including, without limitation, the Common Elements and all rights, easements, and appurtenances belonging thereto, but not including any improvements located on the land that area subject to the Encroachment Lease.~~

*Note Regarding Exhibits: To the extent that there are any references to Exhibits contained herein (other than Exhibits G, H and I, which are attached hereto), they shall be deemed to indicate and refer to those Exhibits filled of record with the Original Declaration, and all such Exhibits filed with the Original Declaration are hereby incorporated by reference and shall be treated for all purposes as if said Exhibits had been actually attached and filed of record with this Declaration.*

## ARTICLE II. DESCRIPTIONS AND RESTRICTIONS

2.1 RECORDATION OF PLAT. The Map ~~shall be~~ has been filed for record simultaneously with the recording of the Original Declaration. The large original Map is contained in the Association's records. The Map consist of:

- a. the legal description of the surface of the land described in Exhibit A to the Original Declaration;
- b. the linear measurements and location, with reference to the exterior boundaries of said land, of the existing Boatdocks and all other improvements constructed, or to be constructed, on said land by Declarant, but not including any improvements located on the real Property that are subject to the Encroachment Easement or which have been or will be constructed and placed on Declarant; the Property by the Association; and
- c. the footprint of the existing Boatdocks, showing the exterior boundaries and number of the Boatslips, and any other data necessary for the identification of them, which information is depicted by plats.

The Board may amend the Map, from time to time, to ensure that same conforms with the actual location of any of the improvements and to establish, vacate, and relocate easements and access road easements.

2.2 DESIGNATION OF BOATSLIPS. The Project consists of the Property described in Exhibit A, including 48 separately-designated Boatslips, owned by the Association. Each boatslip is identified by a number on the Map.

2.3 REGULATION OF COMMON AREAS. Reasonable regulations governing the use of the Boatdocks and common areas by Members and by their guests and invitees shall be promulgated by the Board. All Members shall be furnished with a copy thereof at the direction of the Board. Each Member shall be required to comply strictly with said rules and regulations and shall be responsible to the Association for compliance by the Member's family, relatives, guests, invitees, tenants, and contractors.

#### 2.4 USE AND OCCUPANCY RESTRICTIONS.

a. *Purposes.* Subject to the other provisions of this Declaration, no part of Waterfront may be used for purposes other than as a boat marina and the related common purposes for which Waterfront was designed.

b. *Use Restrictions.* Without limiting the generality of the foregoing provisions of this section, use of Waterfront by the Members and their family and guests shall be subject to the following restrictions:

(1) Nuisances and safety. No unsafe, noxious, offensive, or illegal activity, or odor is permitted in Waterfront. No activity shall be conducted on the property which in the judgment of the Board of Directors might reasonably be considered as annoying to neighbors of ordinary sensibilities, or might be reasonably calculated to reduce the desirability of the property for quality of living. No exterior loudspeakers or flashing lights shall be allowed. No person may do anything that will increase insurance rates for Waterfront without the prior written consent of the Board or which may cause such Improvements to be uninsurable or which may cause any policy to be canceled, or suspended or materially modified by the issuing company.

(2) Barbecue grills. No exterior fires and no barbecue grills may be operated on the Property.

(3) Noise. Members shall refrain from playing radios, televisions, stereos, and other electrical or mechanical devices loud enough to disturb others. Yelling or loud talking is prohibited.

(4) Pets. Pets must be accompanied by the pet's owner at all times. Animals must be kept on a leash when outside a boat. Pets may not make excessive noise (in the sole judgment of the Board). Leashes may not be tied to objects and must be held by a person who can control the animal at all times. Animals may not be left alone at the Marina. Animal owners or handlers shall immediately clean up after such animals have defecated anywhere at the Marina. Animals may not be fed at the Marina. If these restrictions are violated, the Board may remove the animal and may prohibit the individual Member or tenant from bringing any pet to the Marina again.

(5) Liability for pets. A pet owner is strictly liable to all other ~~tenant~~Members and their respective families, guests, tenants and invitees for injury and all damage caused by any animals brought or kept in Waterfront by a Member or the Member's family or guests. The Association shall not have any liability for injury or damage caused by any animal brought or kept at the Marina.

(6) Signs. All signs are absolutely prohibited and may not be exhibited anywhere in the Marina, except for directional or warning signs approved by the Board. Board members and management company representatives may, without prior notice, remove and throw away signs in violation of this Declaration.

(7) Storage. Nothing may be stored on the Property except in areas approved by the Board.

(8) Vehicles. No vehicles are allowed on the Property. Parking of vehicles, motorcycles and bicycles in grass areas, dirt areas, flower beds, pedestrian bridge, or sidewalks is prohibited.

(9) Boat repair. Minor repairs to boats are permitted while the boats are moored in their respective slips. Otherwise, no repairs may be done on boats anywhere on the Property.

(10) Trash. The Board may designate required areas for trash receptacles and required types of receptacles.

- (11) Pest control. The Association shall have responsibility for pest control on the Property.
- (12) Lighting. All exterior lighting in Waterfront must be approved by the Board.
- (13) Antennas. No exposed exterior television or radio antennas or satellite dishes for receiving signals may be installed anywhere on the Property.
- (14) No alterations. No structure, equipment, or object may be added to or removed from the Property without the consent of the Board.
- (15) No drilling. No drilling, digging, quarrying, or mining operation of any sort shall be permitted in Waterfront, except to the extent: (a) that the Association conducts such activities in conjunction with the construction, repair and maintenance of Boatdocks or other Association improvements; or (b) as may be specifically authorized for improvement placed, constructed, Waterfront-repaired, or maintained under the Encroachment Easement by the terms of said Encroachment Easement or by written permission of the Board.
- (16) No temporary structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuildings is permitted in Waterfront, temporarily or permanently. However, temporary structures may be used in connection with the construction, repair or rebuilding of any Boatdock or other structure.
- (17) Criminal activity. While on any part of Waterfront, no person may violate any criminal laws, health codes or other applicable laws. No tampering with water, lighting, sprinklers, pool equipment or other equipment is allowed.
- (18) Persons who may use common areas. The BoatdocksProperty may only be used by Members, and their tenants, family, and guests and othersguests, and by third-parties to whom the Association rents Boatslips under a signed rental agreement which must be terminable upon 30 days notice by the Association. The purpose of the termination notice is to assure that as soon as practicable, Boatslips will be pursuant to Section 5.6 herein.
- available for unit owners in the Marina Club Condominiums and Lakeside Condominiums.

2.5 RESTRICTIVE COVENANTS, EASEMENTS, AND ENCUMBRANCES EXISTING PRIOR TO DEVELOPMENT. The Property is subject to several recorded documents whichthat predate the creation of this Declaration. Those documents are described in attached Exhibit C.

### ARTICLE III. GENERAL

3.1 SUBJECT TO DECLARATION AND BYLAWS. Each Member and the Association shall comply strictly with the provisions of this Declaration, the Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Association on behalf of the Members or, in proper cause, by an aggrieved Member against another Member or against the Association.

3.2 PROPERTY OWNERSHIP. The Property, including the Boatdocks, will be owned in fee simple by the Association.

3.3 PARTITION. None of the Property may be partitioned.

3.4 BOARD APPROVAL FOR CONSTRUCTION, ALTERATION, OR MODIFICATION. Any proposed construction, alteration, or modification of a completed dwelling or the improvementsBoatdock, Boatslip, or any other improvements (including improvements constructed under the Encroachment Easement) shall be in harmony with the external design and location of the surrounding structures and topography, and shall not be considered until submission to the Board of complete plans and specifications showing the nature, kind, shape, size, materials, color, location, and any other information reasonably necessary for all proposed work.

## ARTICLE IV. MANAGEMENT AND ADMINISTRATION

### 4.1 AUTHORITY TO MANAGE AND DUTY TO MAINTAIN.

a. Except as otherwise provided in this Declaration, the affairs of Waterfront shall be managed and administered by the Association. The Association shall have all rights, powers and duties of, and shall constitute and be, the "Association," as that term is used in the Texas Uniform Condominium Act -- even though the Project is not a condominium project subject to that Act. The Association shall have the right, power, and obligation to provide for the maintenance, repair, replacement, and administration of Waterfront, including common elements, to the degree and in the manner provided in this Declaration, the Bylaws, and the rules and regulations of the Association.

b. The Association shall maintain and improve the landscaped areas of the Property.

c. The Association shall have authority to grant and modify easements on the Property and to expend Association monies to maintain the land area between the Property and the Boat docks, except to the extent that such obligation belongs to another party under the terms of the Encroachment Easement.

d. The Association shall have authority to promulgate the necessary agreements consistent with this Declaration and may require such agreement to be signed by all ~~unit owners in the Marina Club Condominiums and Lakeside Condominiums who rent a Boat slip in the Association's Boat docks.~~ Members.

e. The business and affairs of the Association shall be managed by the Board, and the Association may enter into a management agreement upon the terms and conditions approved by the Board and consistent with this Declaration.

4.2 BOARD OF DIRECTORS. The Board shall consist of the same persons who serve as the Board of Directors of the Marina Club Homeowners Association, Inc. At all times, such two incorporated associations shall be separate and distinct from each other and shall have no rights, duties, or obligations of the other. No monies, property, or records of the two associations shall be commingled.

4.3 ARTICLES OF INCORPORATION AND BYLAWS. The administration of Marina Club Waterfront shall be governed by this Declaration, the Articles of Incorporation of the Association, and the Bylaws of the Association, and the resolutions of and rules and regulations adopted by the Board. The initial Articles of Incorporation of the Association and initial Bylaws of the Association are contained in Exhibit D and Exhibit E, respectively. Each of the foregoing documents may be amended or changed only in accordance with the amendment procedures contained in the respective documents.

4.4 ADMINISTRATION AND ENFORCEMENT OF DECLARATION, BYLAWS AND RULES. The Association or any Member may utilize any of the rights and remedies set forth below, for the enforcement of all restrictions, conditions, covenants, reservations, liens, bylaws, rules, charges, and liabilities imposed by the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or Rules. Failure of the Association or any Member to enforce shall not be deemed a waiver of the right to do so thereafter.

a. *Rules and regulation authority.* The Board may adopt rules and regulations for governing the use and maintenance of the Property and obtaining compliance by Members and their families, guests, and tenants with this Declaration and with the Association's Bylaws, rules, and regulations, provided that same are not prohibited by this Declaration or Texas law. The rules must be consistent with and not in conflict with this Declaration.

b. *Late charges.* The Board may adopt late charges, from time to time, for late payment of monies owed to the Association by the Members.

c. *Returned check charges.* The Board may assess returned check charges against a Member, as set by the Board from time to time, for each returned check, plus late charges, until acceptable payment is received.

d. *Nonassessment items first.* All monies received from a Member may be applied first to nonassessment obligations of the Member, such as fines, late charges, returned check charges, user fees, damages, etc., regardless of notations on checks and transmittal letters.

e. *Suspension of voting rights and use rights.* A Member's right to vote and the right to use common facilities (including the Boatdocks) when the Member is more than 30 days delinquent on any sum owed to the Association shall be automatically suspended without notice. Such suspension rights shall extend to general or special membership meetings, mail ballots, committee meetings, board meetings, and all other meetings. Additionally, if a Member is more than 60 days delinquent on any sums owed to the Association, the Association shall have the right remove and store (at the cost of the Member) any personal property of the Member (including boats) located on the Property, and to lease the Member's Boatslip in the same manner as if the Member had executed an Election to Not Use Boatslip under Article 5.5.

f. *Fines.* The Board or the Association's manager may assess fines against a Member for violations by the Member or his family, guests, agents, or tenants of standards of conduct contained in the Declaration and the Association Rules. Fines may also be assessed for violation of suspended common facility use rights. Each day of violation may be considered a separate violation if the violation continues after written notice to the Member. There must be notice of the alleged infraction and fine to the Member no later than 45 days from the alleged infraction.

g. *Interest.* All sums due the Association by Members shall bear interest from due date at the highest lawful rate, compounded annually.

h. *Fees for special services.* Fees chargeable to Members for special services (such as furnishing copies of documents, etc.) shall be set by the Board from time to time.

i. *Parking limitations.* Vehicle owners shall reimburse the Association for any costs incurred in towing vehicles illegally parked provided notice required in applicable statutes is complied with regarding illegal parking. Members shall be responsible for parking violations of their tenants, family members, guests and invitees.

j. *Publication of delinquencies.* The Board may disclose and publish to Association members and mortgagees the financial condition of the Association, including a list of names and amounts of any delinquencies. The Board may notify mortgage lenders and tenants of delinquent monies owed by such Members to the Association. Mortgage lenders may notify the Board of any delinquencies in the payment of mortgages.

k. *Change of address.* Members shall keep the Association timely informed of their current addresses and any change of address.

l. *Venue and lawsuit authority.* All obligations of owners, tenants, and the Association arising under this Declaration, the Bylaws, or Rules shall be performed in Travis County, Texas, and venue for any lawsuits relating thereto shall be in Travis County, Texas. The Association shall have the right to file and defend a suit (including injunctions) and recover on behalf of the Members in any cause of action based on damages to the Property or based on liabilities of Members and their families, guests, agents, tenants, or third parties accruing to Members and/or the Association.

m. *Attorney's fees.* If delinquent accounts or other violations are turned over to the Association's attorney, the Member shall be liable for all attorney's fees incurred by the Association in collections, filing liens, foreclosing liens, releasing liens, prosecuting lawsuits, and/or otherwise enforcing the Declaration, Bylaws, and Rules.

n. *Assignment of revenues.* The Association shall have the power to convey a security interest in its revenues to a lender for purposes of obtaining loans necessary for the operation and/or improvement of Waterfront. No such security interest may be given without being approved by a vote of 2/3rds of the Association Members.

o. *Other powers.* The Association shall have all other powers necessary and proper for the government and operation of the Association, including but not limited to those powers of a condominium owners association as contained in the Texas Uniform Condominium Act.



#### 4.5 MEMBERSHIP AND VOTING.

a. *Membership.* The Members of the Association shall be owners who (1) own a unit in the Marina Club Condominiums or the Lakeside Condominiums, and (2) are renting a Boatslip from the Association. The right to be a Member by renting a Boatslip all of those individuals and entities who are members of the Marina Club Homeowners Association, Inc. and the Lakeside Homeowners Association, Inc. The rights and obligations of membership in the Association shall be appurtenant to fee simple title to the units of Marina Club Condominiums and Lakeside Waterfront Condominiums, and upon the transfer of title to a unit in the Marina Club Condominiums or Lakeside Condominiums, the membership appurtenant thereto shall be deemed to be transferred to the grantee of such unit, upon recordation of the deed or other conveyance thereof in the Real Property Records of Travis County, Texas, irrespective of whether the transfer of membership in the Texas Association is specifically evidenced on the conveyance instrument. No right to be a Member may be conveyed or transferred in any other manner. If a unit in Marina Club Condominiums or Lakeside Condominiums is owned by a legal entity, the officers or officials of such entity shall be required to designate in writing to the Board the name of one (1) individual who shall be empowered to exercise the rights of the Member. If a unit in Marina Club Condominiums or Lakeside Condominiums is owned by more than one individual, each owner shall be deemed to hold a joint interest in the appurtenant membership in the Association.

b. *Voting.* Membership in the Association entitles the Member to one (1) vote. If the membership is joint or is held in the name of a legal entity, as provided in section 4.5(a) above, the vote of any joint owner, or of any officer or official of the entity holding membership, shall be deemed to be authorized by the other joint owner(s) or the entity and shall constitute the vote of the Member.

c. *Membership meeting.* An annual membership meeting shall be held following the annual membership meeting of the Marina Club Homeowners Association, Inc.

#### 4.6 INSURANCE.

a. *Fire and Extended Coverage.* The Association shall obtain and maintain at all times insurance on the Boatdocks of the type and kind required by this Declaration. The insurance shall be carried in blanket policy form naming the Association as the insured. Further, the policy shall insure against loss or damage by fire, vandalism, malicious mischief and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the Boatdocks and other insurable ~~Improvements, improvements,~~ and against such other hazards and for such amounts as the Board may deem ~~advisable.~~ advisable. Notwithstanding the foregoing, the Association is not obligated to insure against any loss of related to the personal property of Members (including boats) or related to any improvements constructed, placed or maintained on the Property subject to the terms and conditions of the Encroachment Easement.

b. *Liability Insurance.* The Association shall maintain a policy of comprehensive public liability insurance and property damage insurance against claims for personal injury, death, or property damage suffered by any person ~~on~~ or about the Property. The public liability and property damage insurance shall afford protection to such limits and extent as the Association deems desirable; provided that the policy limit shall not be less than an amount approved at the Association annual membership meeting covering all claims for personal injury and/or property damage arising out of a single occurrence. In no event shall the liability policy amount be less than \$1,000,000. Such insurance policy shall also provide that it cannot be canceled or substantially modified by either the insured or the insurance company until after 10 days prior written notice to the Association, to the extent allowed by law. This liability coverage does not insure the individual Member for liability or damages arising out of the use of the Property, and is subject to the additional insurance limitations contained in the Encroachment Easement.

c. *D&O Insurance.* The Association shall maintain directors and officers liability insurance in amounts reasonably satisfactory to the Board.

d. *Fidelity Bond.* The Association may maintain or cause to be maintained an adequate blanket fidelity bond covering all persons handling or responsible for funds of or administered by the Association and such bond shall be of a kind and in an amount the Association deems necessary for the protection of the Members.

4.7 ACCOUNTING AND AUDIT. The Board shall keep or cause to be kept books of detailed account of the receipts and expenditures affecting Waterfront and its administration and specifying the maintenance and repair expenses of the Property and any other expenses incurred by or on behalf of Waterfront or the Association. Both the books of accounts and all vouchers supporting the entries made therein shall be available for examination at the office of the Association by all Members, at convenient hours on working days, and the Board shall cause to be established and announced for general knowledge the days and hours within which such books shall be available for inspection. All such books and records shall be kept in accordance with generally accepted accounting procedures, consistently applied, and shall be audited at least once a year by an outside auditor selected by the Board unless directed otherwise by the Association at the annual membership meeting. The fiscal year of the Association shall be the calendar year unless another period is established by resolution of the Board.

#### 4.8 MAINTENANCE.

a. *Duty to maintain.* The Association shall maintain the Property in a good condition, including landscaping, Boatdocks, pathways, lighting, fences, gates, and security systems.

b. *Lighting limitation.* Lights on Boatdocks and in other areas of the Property shall be directed downward or straight up in consideration of the adjacent condominium units in Lakeside. Lights on the Property shall not shine directly into windows or patio areas of Lakeside condominiums.

#### 4.9 SECURITY POLICIES.

a. The Association does not promise, warrant, or guarantee the safety or security of Members, his family, tenants, guests, or their agents or contractors or their personal property against the criminal actions of others. Each Member and other persons on the Property have the responsibility to protect himself or herself and to maintain insurance to protect his or her belongings. Members should contact an insurance agent to arrange appropriate fire and theft insurance on their personal property.

b. No security system, patrol, access gates, or electronic security device can provide protection against crime at every location at every moment of the day or night. Even elaborate security systems are subject to mechanical malfunction, tampering, human error or personnel absenteeism, and can be defeated or avoided by clever criminals. Therefore, Members and all other persons on the Property should not rely on such systems and should always protect themselves and their property as if no security systems exist. Members and all other persons in Waterfront should make no other assumptions regarding security. The best safety measures are those precautions that can be performed as a matter of common sense and habit.

c. If security systems, security devices, access gates, or walk-through/drive-through services are utilized in Waterfront, no representation is made by the Association that such systems, devices, or services will prevent injury, theft or vandalism. Any companies or individuals walking or driving the Property on behalf of the Association, by law, may not carry weapons and have no greater authority under the law to restrain or arrest criminals or to prevent crime than the ordinary citizen. The Association does not promise, warrant, or guarantee that any such systems, devices, or services do in fact discourage or prevent breaches of security, intrusions, thefts, or incidents of violent crime. The Association reserves the right to reduce, modify or eliminate any security system, security devices, or services (other than any that are statutorily required) at any time; and such action shall not be a breach of any obligation or warranty on the part of the Association.

d. If controlled access gates are provided, Members will be furnished written operating instructions; and it is the responsibility of Members and their tenants to read them and bring any questions to the attention of the Association or its management company. Further, it is the responsibility of Members to promptly notify the Association in writing of any known problem, defect, malfunction or failure of security-related devices.

e. Protecting Members, their families, occupants, guests and invitees from crime is the sole responsibility of the respective Members, occupants, and law enforcement agencies. Members should call the police or 911 first if a crime occurs or is suspected. Members should promptly report to the Association or the Association's management company in writing any common area locks, latches, lighting, overgrown shrubbery, fences, gates, alarm, and other security-related devices that they believe are in need of repair or improvement.

f. The Association expressly disclaims any duties of security. The Association shall not be responsible for damage or injury resulting from improper use of or malfunction of access gates.

#### ARTICLE V. RENTAL OF BOATSLIPS RIGHTS AND OBLIGATIONS OF MEMBERS

~~5.1 BOATSLIP RENTALS: Owners of units in the Marina Club Condominiums and Lakeside Condominiums shall have the right to rent Boatslips in accordance with the Restrictive Covenants contained in Exhibit G. The Board may rent Boatslips to the general public to the extent that Boatslips are not rented to owners of units in the Marina Club Condominiums and Lakeside Condominiums. Rental contracts with the public shall be cancelable upon 30 days notice if the need for cancellation is due to a request for a Boatslip for a unit owner or tenant of a unit owner in the Marina Club Condominiums or Lakeside Condominiums. A longer cancellation notice time shall be permitted if necessary to rent the vacant Boatslips to the public. Rental contracts shall generally be for one year, subject to shorter terms for good cause as determined by the Board. Rental of Boatslips shall only be by written lease contract, the terms of which shall be determined by the Board, consistent with this Declaration. Boatslip rental contracts were formerly called "Marina Club Membership Agreements". All leases shall require the parties to comply with the Association's Rules and the use restrictions set forth in this Declaration.~~

~~5.2 PRIORITIES: Owners of units in the Marina Club Condominiums and Lakeside Condominiums have priority over the general public. Such unit owners who are not renting a Boatslip have priority over condominium unit owners who are renting two or more Boatslips if there are no Boatslips that are rented to the public. Owners of condominium units in Marina Club Condominiums and Lakeside Condominiums have equal priority with respect to each other except that unit owners in Lakeside Condominiums have priority over unit owners in Marina Club Condominiums to rent the westernmost eight Boatslips. A tenant of a condominium unit in the Marina Club Condominiums or Lakeside Condominiums shall have the same priority and leasing rights as the unit owner from whom the tenant is renting such condominium unit.~~

~~5.3 SETTING OF RENTS: Rents and other terms of boat rental contracts shall be set by the Board. Rents charged to the public shall be at full market rates. Rents charged to owners of units in the Marina Club~~

~~Condominiums and Lakeside Condominiums shall be the least amount of rent that the Board may reasonably set, considering the following factors: (1) the Property shall be prudently maintained in a first class manner, including landscaping and preventive maintenance of all structures, (2) insurance shall always be maintained by the Association as required by this Declaration, and (3) prudent reserves shall be created and maintained for emergencies and anticipated capital improvements or replacements.~~

~~5.4 NO SUBLETTING. No member or tenant may sublease a boatslip rented by such member or tenant.~~

~~5.5 NO ASSESSMENTS. There shall be no assessments against Members. The income of the Association shall be derived from renting Boatslips to owners of units in the Marina Club Condominiums and Lakeside Condominiums and their tenants and to the public.~~

~~5.6 LIEN FOR RENTS AND OTHER SUMS DUE. RIGHTS TO BOATSLIPS. Each and every Member shall have the right to exclusive use and control of one (1) of the Boatslips for the purpose of docking and storing watercraft (and related property) owned by the Member, subject to the terms and conditions outlined in this Article V. More particularly, the Members owning the following units within Marina Club Condominiums and Lakeside Condominiums shall have the right of use to the Boatslip specified below, including any related locker space:~~

	Unit	Boatslip
Lakeside Condominiums:		

Marina Club Condominiums:

~~5.2 ASSESSMENTS. The income of the Association shall be derived from Assessments levied by the Association and rental income from Boatslip rentals to the general public. Assessments levied by the Association shall be set at the lowest amount that the Board may reasonably require, considering the following factors: (1) the Property shall be prudently maintained in a first class manner, including landscaping and preventive maintenance of all structures, (2) insurance shall always be maintained by the Association as required by this Declaration, and (3) prudent reserves shall be created and maintained for emergencies and anticipated capital improvements or replacements. The initial Assessment amount shall be one-thousand dollars (\$1,000.00) per calendar year for each Member. Assessments shall be paid in a lump sum or in installments (at the Board's option) at times established by the Board.~~

~~5.3 LIENS AND ENFORCEMENT. If an Assessment is not paid in full by a Member by the due date set by the Board, the amount due shall be deemed delinquent. The Association shall be permitted to enforce the collection of delinquent Assessments or other sums due the Association from a Member by denying the delinquent Member, his family, guests, tenants, and invitees physical access to the Boatdocks and the Boatslip for such period of time as any amounts remain due to the Association, and by taking other enforcement actions permitted under state law, this Declaration, and the Rules.~~

~~In addition to the foregoing, the Association shall have a lien against any watercraft or other personal property located in the delinquent Member's Boatslip and related locker area, as provided below:~~

a. All sums due and unpaid by a Member shall be secured by an express contractual lien (which is hereby created, granted and reserved) on any boat of the Member moored in a Boatslip in the Boatdocks owned by the Association, watercraft or personal property belonging to the Member and moored in a Boatslip or located in a locker in the Boatdocks, which lien shall be superior and prior to all other liens and encumbrances, except only for a purchase money lien.

b. Foreclosure of such lien shall be in accordance with the Uniform Commercial Code.

c. Suit to recover a money judgment against the Member for unpaid sums shall be maintainable without foreclosing or waiving said lien securing same.

5.4 ONLY MEMBERS MAY USE BOATSLIPS. A Member who does not own watercraft or does not otherwise desire to use a Boat slip may either: (a) keep the Boat slip vacant; or (b) assign his right of exclusive use and control over to the Association by executing an Election Not to Use Boat slip pursuant to Section 5.5 below. Members may not sell, assign, or otherwise transfer their right to exclusive use and control of their Boat slip to any other person or entity. This includes a prohibition on Members renting the Boat slip or otherwise allowing another individual or entity use of the Boat slip, whether for financial consideration or otherwise. Notwithstanding the foregoing, any individual occupying a Member's unit in Marina Club Condominiums or Lakeside Condominiums, whether as a tenant or otherwise, is permitted to keep a boat in the Member's Boat slip for so long as the occupancy continues.

5.5 ELECTION NOT TO USE BOATSLIP. A Member who does not wish to use the Boat slip which he is entitled to use may execute an Election to Not Use Boat slip, which shall be in a written form approved by the Board. The Election to Not Use Boat slip (or "Election") shall be signed and dated by the Member and shall provide:

a. The name of the Member and his Boat slip number; *160 Am.*  
b. That the Member shall have the right at any time, with thirty (30) days notice to the Board, to recommence use of the Boat slip;

c. That the Member shall not be required to pay any Assessments due during the period of time that the Election is in effect;

d. That the Association, at the sole discretion of the Board, may elect to refund to the Member the proportion of previously paid Assessments that relates to the period of time after which the Election is effective;

e. That any Member who recommences use of a Boat slip shall be required to pay the pro-rata portion of Assessments that relate to the portion of the then current Assessment period during which the Member will be using the Boat slip; and

f. That the Association shall have the right to rent the Boat slip, and to retain all rental payments, during the time that the Election is in effect, such rental agreements to provide for termination with no more than thirty (30) days notice by the Association, and the Association shall not be liable to Members for any holding over of a Boat slip, but shall use reasonable diligence to pursue eviction of any holdover tenant.

The Board shall, in its sole discretion, be permitted to deny and not honor any Election to Not Use Boat slip if, in the sole judgment of the Board, the Member has evidenced a pattern of executing and then terminating such Elections solely for the purpose of seeking refunds of, and exemptions from, Assessments for the fall and winter months or for other such periods of time that boating activity may be less desirable.

5.6 ASSOCIATION RIGHT TO RENT BOATSLIPS. In addition to the right to rent Boat slips not used by Members pursuant to Section 5.5(f) above, the Association shall have the exclusive right to rent to the general public, at market rates, any and all Boat slips not specifically designated for use by a Member. Boat slip rental agreements shall generally be for one (1) year, subject to shorter terms for good cause as determined by the Board and any termination notice required under Section 5.5(f) above. Renting of Boat slips shall only be by written rental agreement. All leases shall require the parties to comply with the Association's Rules and the use restrictions set forth in this Declaration.

## ARTICLE VI. MISCELLANEOUS PROVISIONS

6.1 JUDICIAL PARTITION. There shall be no judicial partition of the Property, nor shall Declarant or any person acquiring any interest in Waterfront or any part thereof seek any such judicial partition, ~~until the happening of the conditions set forth in Section 6.1 in the case of damage or destruction or unless the Declaration has been terminated.~~

6.2 MANAGEMENT AGREEMENTS. The Association shall be professionally managed. A management certificate shall be timely filed with the County Clerk of Travis County, Texas. A copy of the management certificate to be used is contained in Exhibit F and may be modified as needed or required by law. Any agreement for professional management of Waterfront will be terminable by the Association without cause and without payment of a termination fee upon 90 days written notice, and the term of such agreement will not exceed the period of three years. If a management agreement is terminated, the Association shall enter into a new management agreement with a new management agent prior to the effective date of the termination of the old management agreement.

6.3 AMENDMENTS TO DECLARATION. An amendment to this Declaration may be made only upon approval of 2/3rds of the Members, 2/3rds of the Marina Club Condominium unit owners, and 2/3rds of the Lakeside Condominium unit owners, the latter two approvals being required for the sole reason that the right to rent exclusive use and control of a Boatslip is an appurtenant right of condominium unit ownership in Marina Club Condominiums and Lakeside Condominiums.

### 6.4 LIMITED LIABILITY AND INDEMNITY OF BOARD MEMBERS.

a. *Limited liability.* The members of the Board of Directors and Officers of the Association shall not be liable to any Member or any person claiming by or through any Member for any act or omission of such Director or Officer in the performance of his duties unless such act or omission is (1) a breach of the Director's duty of loyalty and fiduciary duty to the Association or its Members, (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, (3) a transaction from which a Director receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office, or (4) an act or omission for which the liability of the Director is expressly provided for by a statute. The Association shall indemnify all such Directors and Officers from all claims, demands, actions and proceedings and any expenses in connection therewith, except if such Director or Officer has acted in violation of the foregoing. The Board may purchase (but is not required to purchase) director's and officer's liability insurance. Such insurance and any indemnification payments shall be treated as a common expense. The Board of Directors is authorized and directed to modify the Association's Corporate Charter to conform to the above.

b. *Indemnity.* The Association shall promptly indemnify any director or officer or former director or officer of the Association for expenses and costs (including attorney's fees) actually and necessarily incurred by him in connection with any claim asserted against the director or officer, by action in court or otherwise, by reason of being or having been the director or officer, except in relation to matters as to which the officer or director is guilty of gross negligence or willful misconduct in respect of the matter in which indemnity is sought.

c. *Nonliability and release.* THE ASSOCIATION AND ITS OFFICERS AND DIRECTORS SHALL NOT BE LIABLE TO MEMBERS, BOATSLIP TENANTS, AND PERSONS ON THE PROPERTY AT THEIR INVITATION OR WITH THEIR PERMISSION, FOR PROPERTY DAMAGE, PERSONAL INJURIES OR HARM RESULTING AT ANY TIME FROM NEGLIGENT CONDUCT OF THE ASSOCIATION'S OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS RELATING TO ENFORCEMENT OR NONENFORCEMENT OF THE ASSOCIATION'S DECLARATION OR RULES. THIS INCLUDES, BUT IS NOT LIMITED TO, DECLARATION PROVISIONS AND RULES REGARDING PET LEASH REQUIREMENTS, VEHICLES, LIGHTING, FENCING, BOATING SAFETY, SECURITY, HAZARDOUS MATERIALS STORAGE, UTILITY LINE PROBLEMS, ETC.. BY LEASING A BOATSLIP, MEMBERS AND TENANTS, AS WELL AS PERSONS ON THE PROPERTY AT THEIR INVITATION OR WITH THEIR PERMISSION, ARE DEEMED TO HAVE RELEASED THE ASSOCIATION AND ITS OFFICERS AND DIRECTORS FROM SUCH LIABILITY TO THE EXTENT AUTHORIZED BY LAW. THE FOREGOING DOES NOT RELEASE AN OFFICER OR DIRECTOR FROM LIABILITY FOR ACTS OR OMISSIONS WHICH ARE: (1) A BREACH OF THE OFFICER'S OR DIRECTOR'S DUTY OF LOYALTY AND FIDUCIARY DUTY TO THE ASSOCIATION OR ITS MEMBERS, (2) ACTS OR OMISSIONS NOT IN GOOD FAITH OR INVOLVING INTENTIONAL MISCONDUCT OR A KNOWING VIOLATION OF LAW, (3) A

TRANSACTION FROM WHICH AN OFFICER OR DIRECTOR RECEIVES AN IMPROPER BENEFIT, WHETHER OR NOT THE BENEFIT RESULTED FROM AN ACTION TAKEN WITHIN THE SCOPE OF THE DIRECTOR'S OFFICE, OR (4) AN ACT OR OMISSION FOR WHICH THE LIABILITY OF THE DIRECTOR IS EXPRESSLY PROVIDED BY STATUTE.

6.5 NOTICES. All notices, demands or other notices intended to be served upon a Member may be sent by ordinary or certified mail, postage prepaid, or by personal delivery, in any event addressed in the name of such Member. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association, may be sent by ordinary or certified mail, postage prepaid, or by personal delivery, in any event to the management company for the Association, until such address is changed by a notice of address change duly recorded in the Real Property Record of Travis County Texas.

6.6 CONFLICT BETWEEN DECLARATION AND BYLAWS. Whenever the application of a provision of this Declaration conflicts with the application of any provision of the Bylaws adopted by the Association, the provisions or application of this Declaration shall prevail.

6.7 INVALIDATION OF PARTS. If any of the provisions of this Declaration or any section, sentence, clause, phrase or word or the application thereof in any circumstances is invalidated or declared unenforceable, such invalidity shall not affect the validity of enforceability of the remainder of this Declaration and the application of any provisions, section, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

6.8 OMISSIONS. In the event of the omission from this Declaration of any word, sentence, clause, provision, or stipulation which shall be necessary for the accomplishment of the intent and purposes of this Declaration, then such omitted matter shall be supplied by inference and/or by reference to the Act.

## ARTICLE VII. ENCROACHMENT EASEMENT

7.1 ENCROACHMENT EASEMENT. The Members recognize and acknowledge that various physical improvements have been constructed and placed upon that portion of land within the Property located between the Boatdocks and the common boundary of the Property with that land comprising the Lakeside Condominiums (i.e., Lot 4, Davenport Ranch, Phase 4, Section 3-A, more particularly described in the map or plat recorded in Book 86, Pages 105A-C, Plat records of Travis County, Texas) (the "Encroachment Area"). The Encroachment Area is more particularly described in the Encroachment Easement, attached hereto as Exhibit H.

The improvements located within the Encroachment Area were constructed as part of the development and construction of the Lakeside Condominiums, both by the original developer of Lakeside Condominiums and by individual unit owners. The Members recognize and acknowledge that these improvements were initially placed upon the Encroachment Area without the approval of the Association or any other person or entity entitled to grant such approval or right of use, but were subsequently permitted by the Association to remain on the Property until such time as the parties could develop a long-term accommodation, which is outlined below.

As such, the Members hereby agree that the issue of unauthorized improvements within the Encroachment Area is resolved by granting to the Lakeside Homeowners Association and its members the right to keep, construct, repair and maintain existing and future improvements within the Encroachment Area, subject to the terms and conditions outlined in the Encroachment Easement. The purpose of the Encroachment Easement is to:

- a. Permit the continued use of the Encroachment Area by the Lakeside Homeowners Association and its members;
- b. Ensure that the Association's legal title to the Encroachment Area remains unclouded and clear of any future claims of ownership;
- c. Ensure that the Association, its Members, and members of the general public who rent Boatslips, continue to enjoy free and unobstructed access to the Boatdocks and other facilities;
- d. Ensure that any additional expenses incurred by the presence of the improvements within the Encroachment Area are borne solely by the Lakeside Homeowners Association and its members;
- e. Address and establish the terms and conditions under which the Encroachment Area will be used, maintained and occupied; and
- f. Clarify various other issues related to the Encroachment Area.

Upon adoption of this Declaration, the Encroachment Lease will be deemed to be executed and approved by, and binding upon the Association and the Lakeside Homeowners Association, including all current and future members of both entities, and shall govern the terms and conditions under which the Encroachment Area may henceforth be used and occupied.

Notwithstanding anything contained herein to the contrary, the Members agree that in consideration of granting the Encroachment Easement (in addition to the consideration outlined therein), Members who are also members of Lakeside Condominiums Lessee shall unconditionally approve any future initiatives related to the construction of additional Boatdocks, repair or replacement of any day dock facilities, and the construction or replacement of any other improvements by the Association.

IN WITNESS WHEREOF, this Declaration has been executed as of the \_\_\_\_\_ day of May, 1995.



DECLARANT: THE UNDERSIGNED, being the Presidents of the Association, the Marina Club Homeowners Association, Inc., and the Lakeside Homeowners Association, Inc., do hereby certify that adoption of this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Marina Club Waterfront Association, Inc. has been approved by at least two-thirds (2/3rds) of the Members of the Association.

By: \_\_\_\_\_

Printed Name: Murray Francois

Title: Vice President

STATE OF TEXAS

COUNTY OF TRAVIS two-thirds (2/3rds) of the unit owners in Marina Club Condominium, and two-thirds (2/3rds) of the unit owners in Lakeside Condominiums.

IN WITNESS WHEREOF, this Declaration is EXECUTED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**MARINA CLUB WATERFRONT ASSOCIATION, INC.**

By: \_\_\_\_\_

Title: President

**MARINA CLUB HOMEOWNERS ASSOCIATION, INC.**

By: \_\_\_\_\_

Title: President

**LAKESIDE HOMEOWNERS ASSOCIATION, INC.**

By: \_\_\_\_\_

Title: President

**Acknowledgements**

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on May \_\_\_\_\_, 1995 by Murray Francois, as Vice ~~this~~ day of \_\_\_\_\_, 2007 by \_\_\_\_\_, as President of Marina Club Waterfront Association, Inc., a corporation incorporated under the laws of the State of Texas, on behalf of said corporation.

\_\_\_\_\_  
Notary Public for the State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by \_\_\_\_\_, as President of Marina Club Homeowners Association, Inc., a corporation incorporated under the laws of the State of Texas, on behalf of said corporation.

\_\_\_\_\_  
Notary Public for the State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2007 by \_\_\_\_\_, as President of Lakeside Homeowners Association, Inc., a corporation incorporated under the laws of the State of Texas, on behalf of said corporation.

\_\_\_\_\_  
Notary Public for the State of Texas

Exhibits:

- A -- Legal Description of the Property (see Exhibit A to Original Declaration)
- B -- Map of the Property (see Exhibit B to Original Declaration)
- C -- List of Restrictions and Encumbrances to which the Property is Subject (see Exhibit C to Original Declaration)
- D -- Articles of Incorporation of the Association (see Exhibit C to Original Declaration)
- E -- Bylaws of the Association (see Exhibit E to Original Declaration)
- F -- Management Certificate (see Exhibit F to Original Declaration)
- G -- Restrictive Covenant and Reciprocal Easement Agreement (~~relating to renting boatslips~~) (see attached)

marinaclubwaterdec.62m