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10 PGS:AL-RESTRICTIONS	
BATCH: 110089	
04/28/2017 - 02:00 PM	
VALUE	0.00
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	50.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	52.00
STATE OF TENNESSEE, CUMBERLAND COUNTY	
JUDY GRAHAM SWALLOWS	
REGISTER OF DEEDS	

THIS INSTRUMENT PREPARED BY:

Gullett, Sanford, Robinson & Martin, PLLC
Suite 1700
150 Third Avenue, South
Nashville, TN 37201

**FOURTH AMENDMENT
to the
AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY
REGIME AND MASTER DEED of the
MARINER'S POINTE INTERVAL OWNERS ASSOCIATION, INC.**

THIS FOURTH AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED as amended and restated under date of June 12, 1995 (the "Original Declaration"), of record at Book D496, Page 150, Register's Office for Cumberland County, Tennessee ("ROCCT"), is made and executed by Mariner's Pointe Interval Owners Association, Inc., a Tennessee nonprofit corporation (the "Association"), as of the 19th day of April, 2017, for itself, its successors, grantees and assigns, pursuant to the provisions of the Tennessee Horizontal Property Act (Title 66, Chapter 27, Tennessee Code Annotated) and the Tennessee Timeshare Act of 1981 (Title 66, Chapter 32, Tennessee Code Annotated).

Mariners

RECITALS:

WHEREAS: the Association is the owner and Developer of a certain tract or parcel of land identified as Mariner's Pointe Resort, a Condominium, Map 99, Parcel 65.01, located in Crossville, Cumberland County, Tennessee; and

WHEREAS: the Original Declaration has previously been amended as follows:

A. FIRST AMENDMENT to the AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED of the MARINER'S POINTE INTERVAL OWNERS ASSOCIATION, INC., of record at Book 1238, Page 858, ROCCT,

B. SECOND AMENDMENT to the AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED of the MARINER'S POINTE INTERVAL OWNERS ASSOCIATION, INC., of record at Book 1238, Page 961, ROCCT, and

C. THIRD AMENDMENT to the AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED of the MARINER'S POINTE INTERVAL OWNERS ASSOCIATION, INC., of record at Book 1485, Page 1354, ROCCT, the Original Declaration and the above-listed Amendments constituting the complete operative Declaration (the "Amended Declaration"); and

WHEREAS: pursuant to Article XII, Paragraph 3 of the Amended Declaration, the Board of Directors possesses the authority to amend the Amended Declaration as necessary to carry out the purposes of the project, if the Developer owns more than 25% of the Unit Weeks in the Condominium; and

WHEREAS: the Association is also the Developer, and owns, as of the date and time of adoption of this Amendment, over 97% of the total existing Unit Weeks, some of which Unit Weeks were conveyed to the Association by individuals, and some of which were acquired by foreclosure; and

WHEREAS: the annual maintenance fee billed to the Interval Owners for 2016 operations failed to generate sufficient funds for continued operations of the Mariner's Pointe Resort in the form of a Condominium; and

WHEREAS: in March 2016, due to the lack of supporting funds, a referendum was submitted to the Interval Owners to seek their preference regarding the cessation or continuation of existence in 2016 as a Condominium; and

WHEREAS: in response to said March 2016 referendum, over 75% of the Interval Owners returned ballots, and of those who returned ballots, 94.3% expressed their unwillingness for the Condominium to continue to incur the cost of attempting to remain in operation as a Condominium, and thus their consent to:

- A. Cease the Condominium's operations;
- B. Place in motion the process of dissolution, liquidation of the Association's assets and termination of its corporate existence;
- C. Not hold an election at the April 23, 2016 Annual Interval Owners' Meeting to replace two Directors who had retired from the Board, such that the three existing and undersigned Directors would continue to serve as the entire Board throughout the dissolution, liquidation and termination process to its conclusion pursuant to Tennessee Nonprofit Corporation Act; and

WHEREAS: thereafter, on April 22, 2016, the Board of Directors of the Association adopted a Resolution (the "April 22, 2016 Resolution") providing as follows:

WHEREAS the Association is 'Developer' of Mariner's Pointe Resort Condominium, and is governed by the appropriately elected Board of Directors; and,

WHEREAS the 2016 annual maintenance fee billed for 2016 operations failed to generate sufficient funds due to a large number of members who did not respond to the billing; and,

WHEREAS the Board determined to provide the membership with a Referendum seeking the member's preference of support for the Board of Directors in the termination and dissolution of the Association; and

WHEREAS the response to the referendum was sufficient to determine direction under the provisions of the Amended and Restated Declaration of Horizontal Property Regime Master Deed, with 551 member votes, or 94.5% of member respondents who were in favor of support of the Board to terminate, dissolve and liquidate the assets of the Association; and,

WHEREAS the Board then cast the Association's Ballot representing the 1015 Developer owned unit weeks in accordance with the Declaration and the will of the majority of the membership, which reflects the preference of 84.1% of the entitled Association member votes; therefore,

BE IT HERE RESOLVED the Mariner's Pointe Interval Owners Association, Inc., Board of Directors shall initiate the steps necessary to complete the termination, dissolution and asset liquidation processes as expediently and efficiently as possible.

and,

WHEREAS: the Association held its Annual Interval Owners' Meeting on April 23, 2016; and at said meeting, the Directors and the President of the Association announced the results of the referendum and, in keeping therewith, the Board's decision to cease operations as a Condominium, and to dissolve, liquidate and terminate the Association; and

WHEREAS: in further keeping with the results of the referendum, a vote was not held to replace the retired Directors, and the three (3) existing and undersigned Directors shall continue to serve as the entire Board throughout the dissolution, liquidation and termination process to its conclusion pursuant to the Tennessee Nonprofit Corporation Act; and

WHEREAS: on May 2, 2016, in keeping with the results of the referendum, the undersigned Directors, as the entire Board, amended the Association's Amended and Restated By-Laws to provide that the Board of Directors shall consist of the undersigned three (3) members, and directed the President of the Association to prepare and execute an appropriate Amendment of said Amended and Restated By-Laws, and to file said Amendment for record; and

WHEREAS: in further keeping with the April 22, 2016 Resolution, the Association's operations and functions as a Condominium ceased on May 28, 2016; and

WHEREAS: pursuant to the above-quoted April 22, 2016 Resolution and subsequent events, the Board of Directors adopted a resolution by unanimous written consent dated April 19th, 2017, effective as of May 28, 2016, thereby confirming, approving and ratifying the decision and actions of the Board of Directors to cease the Association's operations as a Condominium effective May 28, 2016 and take the necessary actions to dissolve, liquidate its assets, and upon completion, to terminate the existence of the Association pursuant to the Tennessee Nonprofit Corporation Act; and

WHEREAS: in light of the events, circumstances and actions that have taken place, the established objective of the Association is to acquire ownership of all interests of Interval

Owners in Units, Unit Weeks and other assets of the Association, and then to convert the form of ownership of the Condominium to Real Property, in order to be able to convey to one or more third parties clear, marketable, insurable fee simple title to all assets of the Association, including the Real Property, in the course of dissolution, liquidation of the Association's assets, and termination of its corporate existence under the Tennessee Nonprofit Corporation Act; and

WHEREAS: at the October 2016 meeting of the Board of Directors, the Board resolved to offer to Interval Owners the following alternatives, in furtherance of the Association's objective to acquire all interests of Interval Owners and to convert the Condominium to Real Property, so that the Real Property can be conveyed with clear, marketable, insurable fee simple title, as well as to enable the Interval Owners to avoid uncertainty and delay and to limit their otherwise unpredictable financial exposure, providing them the appropriate documents by which to exercise one of two choices, those being either:

A. To convey to the Association all of their right, title and interest in and to their respective Units, Unit Weeks, and other assets of the Association, and in consideration thereof, entering into Special Member "Interim Membership Agreement" contracts and thereafter pay assessments as needed to defray the ongoing and future costs of management, maintenance and protection, as well as additional costs of liquidation, including potential state-court litigation or bankruptcy, whatever they may be, thereby entitling them to share in any net sale proceeds of Association assets to the full extent as if they were Tenants in Common in the Real Property and other assets of the Association; or

B. To convey to the Association all of their right, title and interest in and to their respective Units, Unit Weeks, and other assets of the Association and be released from any further liability, thereby foregoing the possibility of sharing in any net sale proceeds of Association assets, but avoiding any obligation to fund the above-referenced ongoing costs.

WHEREAS: in the October 2016 Board of Directors meeting, the Board also determined the need for funding for continuing expenses of the Association's effort to pursue its objectives in the near term; and assessed the accounts of all Interval Owners and Interim Members the sum of \$1,000.00, to be billed in November, 2016; and

WHEREAS: such Interval Owners who were not in financial default ("Nondefaulting Interval Owners") were also informed as follows:

A. That if any of them did not cooperate by exercising one of the two choices given to them, which would have enabled the Association promptly to acquire title to all ownership interests of Interval Owners and thereby to be able to convert the Condominium to Real Property and convey clear, marketable and insurable fee simple title to the Real Property and other Association assets, such noncooperation would require the Association to incur additional substantial expenses, including either litigation in the courts of Tennessee or liquidation in the United States Bankruptcy Court for the Middle District of Tennessee, as well as increased costs due to delay and for management, maintenance and protection of the Association's and Interval Owners' assets;

B. That an advantageous sale might be lost because of inability to convey clear, marketable and insurable fee simple title in the meantime; and

C. That the increased costs of management, maintenance and protection, as well as additional costs of liquidation, including potential litigation or bankruptcy, would reduce the net sale proceeds and consequently reduce the amount that the Nondefaulting Interval Owners who entered into Interim Membership Agreements would receive for their Unit Weeks; and

WHEREAS: on December 7, 2016, the Association foreclosed its liens against 399 Unit Weeks previously owned by Interval Owners who were in financial default (the “December Foreclosure”), and by virtue of said December Foreclosure the Association acquired title to the foreclosed Unit Weeks; and

WHEREAS: as of the date of this Amendment,

A. Interval Owners have deeded their ownership of 192 Unit Weeks and related interests to the Association in consideration of the Special Member “Interim Membership Agreement” described above;

B. 165 parties to Interim Membership Agreements paid the \$1,000.00 assessment and continue to be Interim Members in good standing; and

C. 29 parties to Interim Membership Agreements either voluntarily terminated their Interim Membership Agreement or did not pay the \$1,000.00 assessment and were notified by letters dated January 30, 2017 that their Interim Membership Agreements were terminated; and

WHEREAS: as of the date of this Fourth Amendment, Interval Owners have conveyed to the Association their ownership of 963 Unit Weeks and related assets, including the 29 parties to Interim Membership Agreements mentioned above, whose Interim Membership Agreements were either voluntarily terminated or terminated due to nonpayment of the \$1,000 assessment, thereby foregoing the possibility of participating in any net sale proceeds of Association assets, but avoiding any obligation to fund ongoing expenses, as a result of which they no longer have any ownership, rights, or interest of any kind in and to the Association, its assets, Units, Unit Weeks, the Condominium, or the Real Property; and

WHEREAS: by virtue of the December Foreclosure and the aforementioned conveyances, in addition to previous foreclosures of defaulted Unit Weeks, the Association presently owns and controls 2,331, or 97.45%, of the total of 2,392 Unit Weeks; and

WHEREAS: of the total of 2,392 Unit Weeks, the Interval Owners of 61 Unit Weeks (the “Noncompliant Interval Owners”) failed to respond to or cooperate with the Association by affirmatively exercising either of the two choices made available to them; and

WHEREAS: the Noncompliant Interval Owners, who have not conveyed their Unit Weeks in exchange for a release from further liability, are deemed to have elected to convey their Unit Weeks to the Association, enter into Interim Membership Agreements, and pay assessments to share in the cost of the dissolution, liquidation and termination of the Association; and

WHEREAS: the Noncompliant Interval Owners are delinquent and in financial default due to their failure to fund the November Assessment, and are subject to the Association’s exercise of

its lien rights against their Unit Weeks, including but not limited to nonjudicial foreclosure; and

WHEREAS: by letter of November 1, 2016 to the Noncompliant Interval Owners, the Association informed them that if they did not convey their Unit Weeks to the Association by December 1, 2016, either (A) in exchange for a release from further liability or (B) in exchange for entering into Interim Membership Agreements and paying the initial November 2016 \$1,000.00 assessment as billed to all Interval Owners and parties to Interim Membership Agreements, a Notice of Lien would be filed against them, and the Association would foreclose on their Unit Weeks; and as of the date of this Amendment, the Association is entitled immediately to take said actions against the Noncompliant Interval Owners; and

WHEREAS: Article XVI of the Amended Declaration provides that the Association has a lien against Unit Weeks whose owners default on obligations to pay the fees and assessments imposed by the Association, and has the right to enforce its lien by selling those Unit Weeks at public sale; and

WHEREAS: as a result of the Noncompliant Interval Owners' defaults, the Association cannot acquire title to all ownership interests of the Noncompliant Interval Owners and convert the Condominium to Real Estate in order to be able to convey clear, marketable and insurable fee simple title to the Real Property and clear title to the Association's other assets, without additional delay and substantial expense of continued ownership and maintenance and management of Association assets, and the costs of enforcing the Association's liens against the Noncompliant Interval Owners' Unit Weeks, and the costs of potential litigation in state court or of a bankruptcy case should the Noncompliant Interval Owners persist; and

WHEREAS: the delays and expenses caused by said Noncompliant Interval Owners are causing these additional costs, delays and burdens to fall upon the 165 Nondefaulting Interval Owners who have conveyed their Unit Weeks to the Association, entered into Interim Membership Agreements, and thereafter paid the initial November 2016 assessment of \$1,000.00 as billed; and

WHEREAS: the Board intends to take such steps as it deems appropriate in an effort to allocate the costs of continued ownership of Association assets to the Noncompliant Interval Owners, including the additional expenses that have been incurred and will continue to be incurred due to the defaults of the Noncompliant Interval Owners, to the end that the parties to Interim Membership Agreements are not penalized due to the defaults of the 61 Noncompliant Interval Owners; and

WHEREAS: the Association's acquisition of the ownership interests of all Interval Owners will enable the Association to convert all Unit Weeks of Interval Ownership in the Condominium, including the interests of former Interval Owners, to Real Property; and

WHEREAS: the Board of Directors deems it necessary and appropriate to further amend the Amended Declaration as set forth below, to carry out the purposes of the project; and

NOW, THEREFORE, BE IT RESOLVED, that the Developer, Mariner's Pointe Interval Owners Association, Inc., upon the direction of the Board of Directors of the Association, does hereby publish and declare that the Amended Declaration is, and shall be, further amended by

this instrument, as the **FOURTH AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED** of the Mariner's Pointe Interval Owners Association, Inc., which shall delete, add and amend certain language as follows:

ARTICLE XXIII, Section B of the Amended Declaration is hereby deleted.

A new Article XXIII, Section B of the Amended Declaration is hereby adopted, stating as follows:

Effective at the close of business on May 28, 2016,

(1) The operation of the Mariner's Pointe Resort as a Condominium is deemed to have ceased.

(2) The Association shall commence taking appropriate steps to dissolve, liquidate its assets and terminate its corporate existence pursuant to the Tennessee Nonprofit Corporation Act.

(3) In order to be able to convey clear, marketable, insurable fee simple title to the Real Property and the other assets of the Association, the Association shall acquire all of the ownership interests of Interval Owners in the Units, the Unit Weeks, the Condominium, and related assets, and the remaining ownership interests of Interval Owners shall be extinguished.

(4) In order for the Association to acquire all of the interests of Interval Owners who are, or who become, in default of their financial obligations to the Association, the Association is authorized and permitted to exercise its lien rights against such Interval Owners under Article XVI of the Amended Declaration, including but not limited to conducting nonjudicial foreclosures of those interests.

(5) In order for the Association to acquire all of the interests of Interval Owners who are not in financial default of their financial obligations to the Association, such Interval Owners shall be required to exercise one (1) of the following two (2) choices:

A. To convey to the Association all of their right, title and interest in and to their respective Units, Unit Weeks, and other assets of the Association, and in consideration thereof, entering into Special Member "Interim Membership Agreement" contracts; and thereafter paying assessments as needed to defray the ongoing and future costs of management, maintenance and protection, as well as additional costs of liquidation, including potential state-court litigation or bankruptcy, whatever they may be, thereby entitling them to share in any net sale proceeds of Association assets to the full extent as if they were Tenants in Common in the Real Property and other assets of the Association; or

B. To convey to the Association all of their right, title and interest in and to their respective Units, Unit Weeks, and other assets of the Association and be released from any further liability, thereby foregoing the possibility of sharing in any net sale proceeds of Association assets, but avoiding any obligation to fund the above-referenced ongoing costs.

(6) Any Interval Owner who does not convey his Unit Week and related ownership interests to the Association under Section 5.B. above shall be deemed to have chosen to perform under Section 5.A. above, and shall be required to execute and deliver all documents, and make all payments, required by the Board in connection therewith. Partial compliance shall not be acceptable.

(7) Any Interval Owner who chooses, or is deemed to have chosen, to perform under Section 5.A., and fails to convey all of his right, title and interest in and to his Unit, Unit Week and other assets of the Association, to enter into a Special Member "Interim Membership Agreement" and thereafter to pay assessments imposed by the Association to defray the ongoing and anticipated costs of management, maintenance and protection of the Association, the Units, the Unit Weeks, the Condominium, the Real Property and the other assets of the Association, as well as additional costs of liquidation and termination of corporate existence, including potential state-court litigation or bankruptcy, shall be in default under the Amended Declaration, as amended by this Fourth Amendment. With respect to any such Interval Owner, the Association shall have a lien against the right, title and interest of such Interval Owner in and to his Unit, Unit Week and other assets of the Association. In such an event, the Association shall be authorized and permitted to exercise its lien rights against such Interval Owners and their ownership interests under Article XVI of the Amended Declaration, including but not limited to conducting a nonjudicial foreclosure sale of such interests.

(8) Any Interval Owner who does not timely perform under Section 5.A. or 5.B., execute and deliver all required documents and, in the case of Section 5.A., does not timely pay all assessments, shall not be entitled to share in any net proceeds of sale of any Units, Unit Weeks, Real Property, or any assets of the Association.

(9) The Association is authorized and permitted to take any action, in addition to or instead of foreclosure, to acquire clear, marketable, insurable fee simple title to the Real Property and other assets of the Association, including but not limited to commencing or defending litigation in the state courts of Tennessee and/or filing a petition under Title 11 of the United States Code in the United States Bankruptcy Court for the Middle District of Tennessee and pursuing the same to conclusion.

(10) Once the Association has acquired all Units, Unit Weeks and other assets and interests formerly held by Interval Owners, the Condominium shall become Real Property, and the Association shall hold clear, marketable, insurable fee simple title to the Real Property and all other assets of the Association;

thereafter, the Association shall sell such assets for cash in a manner, and for a price, that is reasonable and fair in the exercise of the judgment of the Association's Board of Directors.

(13) The Association is authorized and permitted to take any action that it deems appropriate in an effort to allocate to, or recover from, the Interval Owners who do not perform under Section 5.A. or 5.B. above and are therefore deemed to be in default,

A. The past and future costs of management, maintenance and protection of all assets, and

B. The past and future costs of liquidation and termination of corporate existence, including any and all costs of for state-court litigation and/or bankruptcy,

including fees and expenses of attorneys and other professional persons, which have been and will be incurred due to their failures promptly and timely to perform under Section 5.A. or 5.B. above, and comply with the directives of the Board of Directors.

(14) When all assets of the Association have been sold and the Association has paid its debts and wound up its affairs, it shall terminate its corporate existence pursuant to the Tennessee Nonprofit Corporation Act.

BE IT, FURTHER, RESOLVED that this **FOURTH AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF HORIZONTAL PROPERTY REGIME AND MASTER DEED** is hereby adopted in accordance with the terms and provisions contained in the Amended Declaration, and shall be deemed to run with the land, and shall be a burden and benefit to the Mariner's Pointe Interval Owners Association, Inc., its successors, grantees and assigns; and any persons acquiring or owning an interest in the subject property, their grantees, successors, heirs, devisees, assigns and personal representatives.

IN WITNESS WHEREOF, Mariner's Pointe Interval Owners Association, Inc. has executed this instrument as of the 19th day of APRIL, 2017.

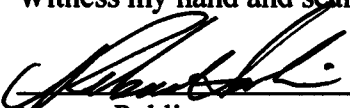
MARINER'S POINTE INTERVAL OWNERS ASSOCIATION, INC.

By: T. David Burgess, Pres
T. David Burgess, President

STATE OF TENNESSEE)
)
COUNTY OF CUMBERLAND)

Before me, the undersigned authority, a Notary public in and for said State and County, personally appeared T. David Burgess, with whom I am personally acquainted and who, upon oath, acknowledged himself to be the President of Mariner's Pointe Interval Owners Association, Inc., a corporation, the within named bargainor, and that he as such President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

Witness my hand and seal at office on this 19th day of APRIL, 2017.



Notary Public

My Commission Expires: 6-12-2018

