

**Mariner's Pointe Interval Owner's Association, Inc.**

**ACTION OF BOARD OF DIRECTORS BY WRITTEN CONSENT  
WITHOUT MEETING**

April 19th, 2017

The Directors of Mariner's Pointe Interval Owners Association, Inc., a Tennessee mutual benefit nonprofit corporation (the "Association"), take the following actions by unanimous written consent pursuant to Tennessee Code Annotated Section 48-58-202.

**WHEREAS:** ARTICLE VIII of the Association's Articles of Incorporation, filed with the Tennessee Secretary of State on June 17, 1981, provides that its affairs shall be managed by not fewer than 3 nor more than the number of directors specified in the By-Laws of the Association, as such By-Laws may be altered or amended by the Board of Directors as provided in ARTICLE XI of said Articles of Incorporation and in ARTICLE X, SECTION 2 of the Amended and Restated by-Laws of the Association, effective June 12, 1995, recorded at Book D496, Page 221, Register's Office for Cumberland County, Tennessee; and

**WHEREAS:** as defined in ARTICLE I of the Declaration of Horizontal Property Regime and Master Deed, as Amended and Restated on June 12, 1995, of record at Book D496, Page 150, Register's Office of Cumberland County, Tennessee (the "Original Declaration"), the Association is both the "Association" and the "Developer" of the Mariner's Pointe Condominium (the "Condominium"), under the direction of its Board of Directors; and

**WHEREAS:** ARTICLE XII, paragraph 3 of the Original Declaration provides that, if owning more than 25% of the Condominium Units or Unit Weeks in the Condominium (as defined in the Original Declaration), the Association, acting as the Developer, shall have the right at any time to amend the Declaration in such manner as the Developer may determine to be necessary, to carry out the purposes of the Condominium project; and

**WHEREAS:** the Original Declaration has previously been amended three times, and the Original Declaration and amendments together constitute the complete, operative Declaration (the "Amended Declaration"); and

**WHEREAS:** due to the circumstances described herein, as well as in other documents and communications described generally below, it is necessary to further amend the Amended Declaration and take other actions; and

**WHEREAS,** in 2015, Board member Foster Moore resigned after 30 years of leadership service due to health issues, and in early 2016, Board member Ray Lankford also resigned from the Board after 24 years of leadership service, and both were granted the designation of "Honorary Lifetime Member of the Board of Directors"; and

**WHEREAS,** by March 17, 2016 action, the Board authorized and directed the President of the Association to cause to be prepared a formal notice to be sent to the Owners of Intervals (also

called “Unit Weeks”) that were not held by the Association (the “Interval Owners”), to provide them appropriate detailed information, including but not limited to:

A. Information that the Association is financially unable to continue to operate as a functional timeshare community without the imposition of substantial additional costs upon the Interval Owners, due to the failure of a large number of Interval Owners to respond to the 2016 annual billing of fees by paying such fees;

B. Information that without the willingness of the Interval Owners to pay additional substantial assessments, the Association’s operations as a Condominium would have to cease on or about May 28, 2016;

C. Details of the Association’s financial status, the status of ownership of Unit Weeks, and other appropriate information, informing them that that the Association must either raise substantial additional funds from the Interval Owners in order to continue to operate as a Condominium, or in the alternative, cease operations as a Condominium, and further take the necessary steps pursuant to the Tennessee Nonprofit Corporation Act to dissolve, liquidate its assets and terminate its corporate existence;

D. A referendum of the Interval Owners, with a ballot on which to express either their support for, or their opposition to, the cessation of operations as a Condominium and the taking of steps to dissolve the Association, liquidate its assets, and terminate its corporate existence; and

E. Information that, if the Interval Owners voted by the referendum ballot to cease operations as a Condominium and take the steps to dissolve the Association, liquidate its assets, and terminate its corporate existence, there would be no election to replace the two (2) retired directors at the April 23, 2016 Annual Interval Owners’ Meeting, and the three (3) existing and undersigned Directors would continue to serve throughout the dissolution, liquidation and termination process to its conclusion; and

**WHEREAS:** by a letter and other documents sent to the Interval Owners on March 25, 2016, the Board of Directors informed the Interval Owners of all of the above-mentioned matters; provided them the aforementioned referendum ballot, entitled REFERENDUM BALLOT, WAIVER AND PROXY; and further informed them that the ballot was required to be returned by April 18, 2016 in order for the results of the referendum to be announced at the April 23, 2016 Annual Interval Owners’ Meeting; 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% confirmed their unwillingness for the Condominium to continue to incur the cost of attempting to remain in operation as a Condominium, and thus to

A. Cease the Condominium’s operations;

B. Commence the process of dissolution, liquidation and termination of corporate existence;

C. Not hold an election at the April 23, 2016 Annual Interval Owners' Meeting to replace the two retired Directors, 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; and

**WHEREAS:** on April 22, 2016, in keeping with the results of the Interval Owners' referendum supporting the cessation of operations as a Condominium and taking the steps to dissolve, liquidate and terminate the existence of the Association, the Board of Directors unanimously adopted a resolution to dissolve, liquidate the assets of the Association, and terminate its corporate existence, in accordance with the Tennessee Nonprofit Corporation Act; 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 existence of the Association; and

**WHEREAS:** in further keeping with the referendum, a vote was not held to replace the two (2) 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; and

**WHEREAS:** on May 2, 2016, in keeping with the results of the referendum, the undersigned Directors, as the entire Board of three members, 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:** ARTICLE XXIII of the Amended Declaration provides that in 2021, the interests of all Owners of Unit Weeks (including both Interval Owners and the Association as owner of Unit Weeks) shall be converted to tenancy in common, with the effects that

A. The Condominium shall cease to exist as such;

B. The interests of Interval Owners in the Condominium and in Unit Weeks shall be converted to traditional, physical real property (the "Real Property") and related tangible and intangible personal property;

C. Each then-qualified previous Unit Week Owner shall become a tenant in common (the "Tenants in Common") in the Real Property and other assets of the Association; and

D. Upon such conversion, all commonly-owned Association assets shall be sold, with any net proceeds from liquidation of the assets being distributed in an appropriate manner, but without any distribution for the Tenant in Common interests owned by Association itself; and

**WHEREAS:** the Association did cease to function as an operating Condominium on May 28, 2016; and

**WHEREAS:** in light of such cessation, the Amended Declaration should be further amended to provide that the Association shall commence taking appropriate steps to dissolve, liquidate its assets and terminate its corporate existence under the Tennessee Nonprofit Corporation Act effective as of May 28, 2016, with the effects described above occurring upon the completion of that process rather than in 2021; and

**WHEREAS:** the March 25, 2016 letter, documents associated with the referendum, additional communications by the Board of Directors to Interval Owners before, during and after the April 23, 2016 Annual Interval Owners' Meeting, and articles and reports published since March 2016 on the Association's website (collectively, the "Correspondence and Documents"), explained that the cost of the dissolution, liquidation and termination process could require assessment(s) of the Interval Owners to defray the expenses associated with

- A. Maintaining, protecting, and managing the Real Property,
- B. Taking steps to ensure that the Association has clear, marketable and insurable title to the Real Property and all other assets of the Association so that they can be conveyed to third parties for the benefit of the Association, and
- C. Taking steps to dissolve the Association, liquidate all assets and terminate its corporate existence, including any potential litigation and/or bankruptcy proceedings that might ensue, necessitated by anyone who failed to respond and cooperate in the process; and

**WHEREAS:** the liquidation of the Association's assets would require that the Condominium cease to exist as such, and that the Condominium be converted to Real Property, so that the Real Property can be conveyed with clear, marketable, insurable fee simple title to any potential purchaser or purchasers of the Real Property; and

**WHEREAS:** the Board of Directors concludes that the appropriate means to accomplish that objective is for the Association to acquire all Units, Unit Weeks, and other real and personal property associated with the Association and the Interval Owners; and

**WHEREAS:** at the time of the referendum, some Interval Owners were current in their payments of assessments and maintenance fees owed to the Association (the "Nondefaulting Interval Owners"), and others were delinquent in their payments and were therefore in default under the Amended Declaration and under the By-Laws (the "Defaulting Interval Owners"); and

**WHEREAS:** among other things, certain of the Correspondence and Documents offered the Nondefaulting Interval Owners two alternative choices in order to enable the Real Property to be conveyed with clear, marketable, insurable fee simple title, as well as to enable them 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 all of their right, title and interest in and to their respective Units, Unit Weeks, and other assets of the Association and the Condominium, and in consideration thereof, entering into Special Member "Interim Membership Agreement" contracts and pay assessments

as needed to defray the above-referenced costs, whatever they may be, thereby entitling them to share in any net sale proceeds of Association assets; or

B. To convey their Unit Weeks to 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; and

**WHEREAS:** such Correspondence and Documents also informed the Nondefaulting Interval Owners 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 to hold title to all ownership interests in Units, Unit Weeks and other real and personal property associated with the Association and the Interval Owners, and thereby to 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, potentially, 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 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 Defaulting Interval Owners (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 Consent Action,

A. Nondefaulting Interval Owners had deeded their ownership of 194 Unit Weeks to the Association in consideration of the Special Member "Interim Membership Agreement" described above;

B. By letter dated November 1, 2016, the Association issued an initial assessment of \$1,000.00 against each Interval Owner and each party to an Interim Membership Agreement (the "November 2016 Assessment");

C. 165 parties to Interim Membership Agreements paid the November 2016 Assessment and continue to be Interim Members in good standing; and

D. 29 parties to Interim Membership Agreements either voluntarily terminated their Interim Membership Agreement or did not pay the November 2016 Assessment and were

notified by letters dated January 30, 2017 that their Interim Membership Agreements, and their relationships to the Association and the Real Property, were terminated; and

**WHEREAS:** as of the date of this Consent Action, Nondefaulting Interval Owners have conveyed their ownership of 963 Unit Weeks to the Association, including the 29 parties to Interim Membership Agreements mentioned above, whose Interim Membership Agreements were terminated voluntarily or due to nonpayment of the November 2016 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, 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 exercising either of the two choices available to them and, hence, are in the category of Noncompliant Interval Owners, are delinquent due to their failure to fund the November 2016 Assessment, and are subject to Foreclosure Action; 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:** by letter of November 1, 2016 to the Noncompliant Interval Owners, they were informed that if they did not deed their Unit Weeks to the Association by December 1, 2016, either

A. In exchange for a release from further liability or

B. Entering into Interim Membership Agreements and paying the initial November 2016 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 Consent Action, the Association is entitled immediately to take said actions against the aforementioned 61 Noncompliant Interval Owners; and

**WHEREAS:** the Noncompliant Interval Owners are deemed to be in default of their obligations to share in the cost of ongoing management, maintenance and protection of the Association’s Real Property and other assets, and the cost of dissolution, liquidation and termination of the existence of the Association; 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 does not yet own all Units, Unit Weeks and other real and personal property associated with the Association and the Interval Owners, and therefore cannot 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, maintenance and protection of Association and Noncompliant Interval Owners' assets, and the costs of enforcing the Association's liens against the Noncompliant Interval Owners' Unit Weeks, and/or 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 to allocate the costs of continued ownership, maintenance and protection of assets, and the costs of any litigation or bankruptcy case 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:** all members of the Board of Directors hereby waive notice of a meeting and affirmatively consent to adopt the resolutions and take the actions set forth hereinbelow;

**NOW, THEREFORE, THE FOLLOWING RESOLUTIONS AND ACTIONS ARE HEREBY ADOPTED BY UNANIMOUS CONSENT WITHOUT A MEETING:**

1. All previous decisions and actions of the Board of Directors described above, and all actions incidental to such decisions and actions, and all documents previously executed and/or delivered pursuant to such decisions and actions, are hereby confirmed, approved, and ratified.
2. The decisions and actions of the Board of Directors on March 17, 2016 are hereby confirmed, approved and ratified.
3. The April 22, 2016 decision and action of the Board of Directors (the "April 22, 2016 Resolution") to cease the Association's operations as a Condominium and take necessary actions to dissolve, liquidate its assets, and upon completion to terminate the existence of the Association pursuant to the Tennessee Nonprofit Corporation Act, are hereby confirmed, approved, and ratified.

4. The actions taken at the April 23, 2016 Annual Interval Owners' meeting are hereby confirmed, approved and ratified.

5. The decisions and actions of the Board of Directors taken in keeping with the referendum vote of Nondefaulting Interval Owners and by unanimous consent without a meeting on May 2, 2016, to reduce the number of directors to three (3) as of May 2, 2016; to amend the Association's By-Laws accordingly; and to instruct T. David Burgess, President of the Association, to prepare and file such Amended By-Laws in the Register's Office of Cumberland County, Tennessee, are hereby confirmed, approved and ratified.

6. In keeping with said April 22, 2016 Resolution, the Board of Directors of the Association, in its capacity as Developer, hereby adopts the attached FOURTH AMENDMENT to the Amended Declaration, (A) changing the cessation of operations as a Condominium from 2021, as stated in ARTICLE XXIII of the Original Declaration, entitled "TERMINATION," to May 28, 2016, and (B) commence the process of dissolution, liquidation and termination of corporate existence of the Association pursuant to the Tennessee Nonprofit Corporation Act.

7. T. David Burgess, President of the Association, is authorized and directed to execute and file said FOURTH AMENDMENT to the Amended Declaration in the Register's Office of Cumberland County, Tennessee.

8. T. David Burgess, President of the Association, is authorized and directed to file with the Tennessee Secretary of State, at the appropriate time, ARTICLES OF DISSOLUTION pursuant to Tennessee Code Annotated Section 48-64-104, in the Tennessee Nonprofit Corporation Act, and, further, upon final liquidation and distribution of all assets of the Association to its creditors and other parties, to file ARTICLES OF TERMINATION OF CORPORATE EXISTENCE with the Tennessee Secretary of State.

9. The Association shall continue with the dissolution, liquidation of its assets, and winding up of the Association's affairs, and termination of its corporate existence, in accordance with its Charter and the Amended Declaration, and the process provided in the Tennessee Nonprofit Corporation Act.

10. T. David Burgess, President of the Association and President of the Association's Manager, Universal Services Corporation, in consultation with the Directors, is authorized to borrow funds in the name of the Association as borrower, from any institutional or individual lender or lenders, or other entity, in any amount that he deems appropriate, on terms that he deems appropriate, granting such liens and security interests as he deems appropriate to secure the repayment of such borrowings, for purposes of defraying the expenses of the Association's ongoing operations, the management, maintenance, and protection of the Association's assets, and the dissolution, liquidation and termination of its corporate existence, including but not limited to foreclosures upon Unit Weeks of Noncompliant Interval Owners, litigation in state court, or a bankruptcy case.

11. The Association is authorized to determine the amount of expense attributable to the defaults of, and delays caused by, the Noncompliant Interval Owners at any particular time, and to take such action as it deems appropriate to enforce the Association's lien against them,

including but not limited to filing suit against them and/or foreclosing upon their Unit Weeks as provided in the Amended Declaration and governing Tennessee law.

12. The Association is authorized to initiate or defend a proceeding in the state courts of Tennessee, to protect the rights and interests of the Association and the parties to Interim Membership Agreements who have continued to comply with the requirements of those Agreements, including but not limited to timely paying the Association any assessments. Such action may include a proceeding to liquidate or otherwise administer the assets of the Association in order to enable the Association to convey clear, marketable and insurable title to the Real Property and other Association assets free and clear.

13. The Association is also authorized to file a petition for relief under Chapter 11 of Title 11, United States Code (a "Bankruptcy Case") in the United States Bankruptcy Court for the Middle District of Tennessee (the "Bankruptcy Court"), to administer and liquidate the Association's assets and wind up the affairs of the Association, including, without limitation

A. The sale or other disposition of all assets and properties of the Association, either through the mechanism of a Chapter 11 Plan, or in the alternative, through a sale of assets free and clear pursuant to Section 363 of the Bankruptcy Code, and in either case, the distribution of the proceeds of sale for the payment of costs and expenses of the sale and of the administration of such Bankruptcy Case, the payment of allowed claims and, if any net proceeds remain, to the payment of former Interval Owners who are parties to Interim Membership Agreements, with appropriate treatment for the Noncompliant Interval Owners taking into account that their noncompliance has caused costly delay and expense of continued ownership of the assets and of litigation,

B. Other actions necessary or appropriate to the winding up of the Association's business and affairs, followed by

C. The termination of the Association's existence is in accordance with its Charter and the Tennessee Nonprofit Corporation Act.

14. T. David Burgess, President of the Association, is delegated authority to determine whether, and if so, when, the Association should file either a proceeding in state court, or a Bankruptcy Case in the Bankruptcy Court, without further action by the Board of Directors; provided, however, that the authorization and consent evidenced hereby shall be automatically withdrawn if either a state court proceeding or a Bankruptcy Case has not been filed within 120 days after the date hereof, unless the Board of Directors extends such time by a subsequent resolution.

15. T. David Burgess, President of the Association, or any one of the undersigned Directors of the Association, in response to an affirmative vote of the Board of Directors, is hereby authorized to execute and verify any documents to be filed in a state court proceeding and/or to execute and verify a Chapter 11 Petition in substantially the same form and content as Bankruptcy Official Form No. 1, and to cause the same to be filed with the Bankruptcy Court to commence a Bankruptcy Case, should the need for such be determined.

16. The Officers of the Association, or any one of them, is authorized to execute, verify and/or approve, and cause to be filed in any state court proceeding or Bankruptcy Case all schedules, lists, applications, motions, and other documents, and to take any and all actions which they or he may deem necessary or proper in connection with such a Bankruptcy Case, including without limitation retention of legal counsel and other professional persons, all with a view to the successful administration and termination of such Bankruptcy Case.

17. The employment of the law firm of Gullett, Sanford, Robinson & Martin, PLLC (“GSRM”) is hereby approved, to represent and advise the Association in all matters pertaining to the actions authorized herein, including without limitation the preparation and filing of any litigation in the state courts of Tennessee and/or in the Bankruptcy Case, and to represent the Association in any state court litigation, or as Debtor and Debtor-in-Possession throughout the Bankruptcy Case and through the termination of the Association’s corporate existence.

18. Without limiting the foregoing, the Board of Directors approves the Association’s employment of GSRM to represent the Association generally in connection with the financial reorganization and liquidation of the Association in dealing with its creditors, the Interval Owners and Special Members, the courts, court officials, government offices, and any other interested persons or entities, with the process of dissolution, liquidation and termination, and any and all other matters.

19. The Board of Directors confirms, approves and ratifies that certain letter of engagement between the Association and GSRM, dated November 28, 2016, including without limitation the provisions set forth in such letter concerning compensation to GSRM; that is, GSRM shall be compensated on the basis of its current hourly rates, which may be increased from time to time, plus reimbursement for out-of-pocket expenses incurred, plus additional compensation if their services warrant same; and the Board of Directors further approves and ratifies all actions taken to date by the Officers and Directors and employees of the Company pursuant to said letter, and all actions taken by GSRM in connection with these matters.

20. The Board of Directors further confirms, approves and ratifies the engagements of Olana J. Burgess, Esq. and the law firm of Looney, Looney & Chadwell, PLLC for all foreclosure and real estate matters, respectively, including compensation to them for their services as previously agreed; and the Board of Directors further approves and ratifies all actions taken to date and as needed in the future by said counsel, respectively, in connection with said real estate and foreclosure matters.

Effective as of the \_\_\_ day of April, 2017:

SIGNATURE ON FILE  
Henry Phillips, Board Chairman

SIGNATURE ON FILE  
Ben Edmonson, Director

SIGNATURE ON FILE  
Sidney McBee, Director