

DUCK KEY SECURITY ADVISORY BOARD MINUTES OF APRIL 16, 2013

BOARD MEMBERS PRESENT:

Tom Neville, Chair
A. Dennis Kulig
Billy Wagner
Merlynn Boback

BOARD MEMBER(S) ABSENT:

Donna Flammang

QUORUM PRESENT:

Yes

ALSO PRESENT, NEW DUCK KEY ADVISORY BOARD MEMBERS TO BE RECOMMENDED FOR APPOINTMENT TO THE MONROE BOARD OF COUNTY COMMISSIONERS BY DISTRICT 4 COMMISSIONER DAVID RICE:

Jay Salinger
Philip Kircher

OTHERS PRESENT:

Robin Neville, Duck Key Property Owner; Jim Boback, Board Member DKPOA and Duck Key Property Owner; Charlie Morse, Duck Key Property Owner; Sandy Hastings, Duck Key Property Owner; Susan Ward, Duck Key Property Owner; Simon Leird, Keys Security; Chad Scibilia; Monroe County Sheriff Office; Ruth Wagner, Duck Key Property Owner; John Schwarz, Duck Key Property Owner; Roger Marriott, Duck Key Property Owner; Franklin Greeman, Attorney at Law, Marathon, Florida; Barbara Thompson, Duck Key Property Owner; Sylvia Hernandez, Duck Key Property Owner; Mary Balazs, Duck Key Property Owner;

Proceedings:

- Meeting called to order 9:00 am by Tom Neville
- Location of meeting: Tom and Robin Neville's home, 126 Bimini Dr., Duck Key, Fl. 33050
- Date of Meeting: April 16, 2013

Franklin Greenman's Discussion Regarding Merger of Duck Key Homeowners Association (DKPOA) with Duck Key Security Advisor Board (DKSAB):

Mr. Greenman was invited to the Duck Key Security Advisory Board Meeting to advise the Members the pros, cons of merging DKPOA and DKSAB and specifically Duck Key's expired deed restrictions. (Please refer to attached letter dated February 12, 2013.)

1. Option #1, do nothing, no deed restrictions. Duck Key property owners would only be protected by the governance of Monroe County. Any restrictions on residential uses are not covered by County code and any action would be an individual basis as opposed to collective action.
2. Option #2, revive the existing restrictions. This option is procedurally burdensome – approved by a majority of the affected parcel owners, in writing; new document of restrictions must be reviewed and approved by the Dept. of Economic Opportunity in Tallahassee; the revived restrictions would not include Harbor Island or lots sold before the 1965 deed restrictions were recorded. The islands of Duck Key need a new set of rules, for instance – the new sewer system.
3. Option #3, with some changes to the DKSAB ordinances written, this Board can be used as a tool in the nature of a homeowner association to carry out whatever goals the Board chooses. There is a guaranteed source of income since it is a governmental entity and because it is governmental, it is a transparent organization wherein anyone can see the budget, which is healthy. Duck Key needs to have a coherent program where it wants to be in 5, 10, 20 years. Write a new ordinance to expand the powers from a Security District to what a normal corporation would have – buy and sell; fire and hire; to contract; improve, enhance, and protect property investments on Duck Key. Duck Key property owners need a plan; this improvement district would have the funds to make real improvements.
4. Questions were asked and answered. The question of most concern from the people at the meeting – how to stop a dictatorial board from over regulating, writing too many restrictions, and how to keep Duck Key from losing its Florida Keys’ charm. Mr. Greenman’s answer: writing the correct by-laws, a good by-law model from a condominium association because they are well established by-laws. Another question was the “how-to” to change from a Security Advisory Board to an Improvement Board; write the amended ordinances, submit to Monroe County Board of County Commissioners, the BOCC would (or would not) pass the new ordinances, next Supervisor of Elections would write a referendum on the November 2014 ballot and the new ordinances would pass if 50% of registered Duck Key voters voted yes. If the amended ordinance is passed, then the by-laws are written. Another question: annexing with Marathon - increase or decrease of our property taxes.
5. The Board thanked Mr. Greenman for his input, Mr. Greenman left at 10:16am.

General Discussion of Possible Merger:

Best solution is to begin and continue an open dialog between DKPOA and DKSAB, to establish a goal to enhance the quality of life for Duck Key property owners. To get to this goal, start with a survey of yes and no questions to have the answers from Duck Key property owners.

Tom Neville wanted to know the general feeling of the Board Members regarding what to do about the deed restriction’s expiration and how to resolve this problem. Merlynn Boback is in favor of Option #3. Dennis Kulig is not completely in favor of Option #3 and would like more discussion. Billy Wagner is in favor of Option #3. Tom Neville would like more discussion before he decides which option he is in favor of. Note: Phil Kircher and Jay Salinger are in favor of Option #3 but they have not been appointed to the Board as of this meeting’s date.

Susan Ward presented to the Board the minutes of the Duck Key Security Advisory Board meeting which took place on March 19, 2013, for approval, whereupon motion duly made first by A. Dennis Kulig and seconded by Billy Wagner, and unanimously adopted. The minutes were approved as presented.

Commissioner Rice Wanted the Board to Re-do a Vote:

MOTION – TOM NEVILLE MOVED AND A. DENNIS KULIG SECONDED A MOTION TO RECOMMEND JAY SALINGER AND PHILLIP KIRCHER FOR APPOINTMENT TO THE DUCK KEY SECURITY ADVISORY BOARD, BY WAY OF DISTRICT 4 COMMISSIONER DAVID RICE TO PRESENT TO THE MONROE BOARD OF COUNTY COMMISSIONERS FOR APPROVAL.

Tom Neville: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Aye

Discussion with Chad Scibilia, Monroe County Sheriff Department.

Full time deputy to patrol Duck Key would require 6 officers, total estimated price \$600,000.00 per year. Tom Neville asked about purchasing a scanner, Officer Scibilia advised it can be purchased at Radio Shack. Questions asked and answered regarding a gate at the bridge; amount of crime on Duck Key; Hawks Cay guest on segways, bicycles, and walking.

MOTION – BILLY WAGNER MOVED AND DENNIS KULIG SECONDED TO PURCHASE A SCANNER WHICH HAS THE SHERIFF AND FIRE DEPARTMENT FREQUENCIES.

Tom Neville: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Aye

Discussion of Camera Installation Progress:

Dennis Kulig researched ADT and talked to the supervisor. The camera installation will be completed by April 22, 2013. Monroe County Sheriff Department will give the Board Members a tour of the cameras and how they operate.

MOTION – MERLYNN BOBACK MOVED AND BILLY WAGNER SECONDED A MOTION FOR THE BOARD TO CREATE A FACEBOOK PAGE TO KEEP DUCK KEY PROPERTY OWNERS INFORMED OF DUCK KEY EVENTS AND TO SEND A LETTER TO ALL DUCK KEY PROPERTY OWNERS FROM THE CHAIR, TOM NEVILLE TO INTRODUCE HIMSELF AND HOW TO GET IN TOUCH WITH HIM. ALSO, TO OBTAIN EMAIL ADDRESSES OF DUCK KEY RESIDENTS:

Tom Neville: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Aye

MOTION – TOM NEVILLE MOVED AND BILLY WAGNER SECONDED A MOTION FOR THE BOARD TO HAVE MEETINGS WITH DKPOA TO CONTINUE TO DISCUSS THE PROPOSED MERGER WITH DKPOA.

Tom Neville: Aye

Billy Wagner: Aye

A. Dennis Kulig: Aye

Merlynn Boback: Aye

Meeting closed 11:48 am

Attached: Franklin D. Greenman, P.A., Attorney at Law, letter dated February 12, 2013

Attached: Dennis Kulig's original copies of 2 Declaration of Restrictions for Duck Key

Next meeting TBA

Minutes submitted by: Susan Ward, 258 W Seaview Dr Duck Key Fl – susaneward@gmail.com 305.393.7157

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February 12, 2013

Mr. David Williamson
222 Corsair Road
Duck Key
Marathon, FL 33050

Re: Review of Duck Key Deed Restrictions

Mr. Williamson,

You have requested me to review and respond to your questions about the Duck Key Deed Restrictions as recorded at Official Record Book 339, page 111-116 and amended at Official Record Book 362, page 604, both in 1965 and amended again at Official Record Book 428, pg 1061-1063 in 1969. I also reviewed the deed restrictions pertaining solely to Hawk's Cay, recorded in 1989, at O.R. 1082, page 2386-2396, and those filed in the DKLS to Brenner deed, recorded in 1980 at O.R. 805, page 85-86.

Because the 1965 and 1969 deed restrictions are more than 30 years old, they are extinguished by the Marketable Record Title Act, specifically Fla. Stat. 712.03. The Marketable Record Titles to Real Property Act (MRTA) extinguishes subdivision restrictions placed on lots when the original recorded restrictions are over 30 years old, and the amended restrictions filed within the 30 year window, did not refer by book and page number to the instruments which imposed the original restrictions.¹

If deeds, filed for record within the 30 year window, had a specific reference to the book and page in the public records where the restrictions can be found, or by reference to the name of a recorded plat that imposed the restriction, they would have revived the deed restrictions as to that lot only. Interestingly, the Brenner deed, which only impacts on certain lots, does make specific reference to the 1965 restrictions, and has revived them, at least as to the lots referenced in that deed, until 2010, when those restrictions were extinguished also.

¹ *Berger v. Riverwind Parking, LLP*, 842 So.2d 918 (5th DCA 2003).

Therefore, based on the 30 year statute of repose in Florida's Marketable Record Titles to Real Property Act, the Duck Key Deed Restrictions of 1965 and 1969 are extinguished and are unenforceable.

That leaves at least 3 options for the residents and owners of property at Duck Key.

The first is to do nothing with the understanding that there are no deed restrictions on any residential property on Duck Key. The greatest loss will be the ability to preserve the residential nature of the island. The duplex lots can become multi-family, and subject to county zoning restrictions, the existing single family lots could become multi unit, or commercial. The ability to have architectural standards is lost. Fence and hedge control is lost (the county has fence height regulations, but none for hedges). While many of the restrictions are supported in the common law (nuisance, animals, drainage, etc), now any violation may only be enforced by an individual lot owner, or tenant, who is damaged by the act. There is no association to act for the homeowners as a group.

The second option is to revive the existing restrictions, and amend them as necessary. The deed restrictions may be revived by the Covenant Revitalization Act, Fla. Stat. 720, Part III. The existing restrictions can be revived if:

- (1) All parcels to be governed by the revived declaration must have been once governed by the previous;
- (2) The revived declaration must be approved a majority of the affected parcel owners, in writing.
- (3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:
 - (a) Have an effective term of longer duration than the term of the previous declaration;
 - (B) Omit restrictions contained in the previous declaration;
 - (c) Govern fewer than all of the parcels governed by the previous declaration;
 - (d) Provide for amendments to the declaration and other governing documents;
 - (e) Contain provisions required by the Revitalization Act for new declarations that were not contained in the previous declaration, primarily notice and due process provisions.

After the revised and revived deed restrictions are approved by a majority of the parcel owners, the governing documents and revived deed restrictions must be reviewed and approved by the Department of Economic Opportunity, formerly the Department of Community Affairs (DCA).

The downside of this is that it is procedural burdensome, and ineffective if a majority of lot owners do not agree, in writing (with the formalities of a deed) to revive the restrictions. Additionally, the revived restrictions still do not include Harbor Isle, or

the lots sold before the 1965 deed restrictions were recorded. And the revived restrictions would need to be amended to give necessary enforcement authority, as described in Fla. Stat. 720, to assess, lien, and enforce violations of the restrictions.

The third option is to use the existing entity, the Duck Key Security District to protect, maintain, and improve Duck Key. This has a number of advantages. First, it is a guaranteed source of revenue, under the supervision of the Clerk of Court to assure transparency for the owners. Second, with appropriate amendments it could not only pass, but enforce reasonable restrictions on the property it includes, and create opportunities for planned improvements, such as landscaping or lighting, on an island wide basis. Third, the Security District jurisdiction already includes Harbor Isle, and the pre-1965 lots, so it would be more representative than the deed restrictions. Lastly, to amend the ordinance creating the Security District for these expanded purposes would only require a majority of the registered voters on Duck Key, not the majority of property owners (but all subject to the approval of the County Commission).

The DKSD is governed by the County Commission, who accepts input from the Security District's Advisory Board.

The procedure would be to develop an amendment to the Ordinance that created the Security District (Ordinance No.005-1992) that expands the purposes of the Security District to better suit your current and future needs. A petition would be submitted, by the Advisory Board or DKPOA or both, to the County Commission requesting the amendment to the original ordinance (it has previously been amended, twice) and requesting that the Supervisor of Elections hold a referendum on the amendment, similar to the original procedure. Hopefully, the BOCC would grant the petition, pass the ordinance, and direct that an election on the amendment be held on Duck Key. The amended ordinance would go into effect upon its approval by the registered voters in Duck Key.

Thereafter the Advisory Board would need to adopt operating procedures that would coincide with, and confer authority to, carry out the expanded purposes. Those procedures would be similar to that of a condominium association, with its due process protections, administrative procedure, and operating regulations.

The difficulty would be drafting an appropriate amended ordinance that would achieve the expanded purpose, and garner public support. I would assume if the Advisory Board or DKPOA requested the BOCC to pass the amending ordinance, they would do so. The more important vote would be obtaining the approval by a majority of voters. That would require a substantial marketing/political effort to assure success.

In consideration of the loss of Duck Key's deed restrictions, and the difficulty in protecting and improving the island without an association, or with a limited association through the Covenant Revitalization Act, the option of improving the Security District is the simplest procedure to the most effective outcome.

I hope this is an adequate response to your inquiry. If you have other questions, or wish to discuss this with me further, please contact my office.

Respectfully,

Franklin D. Greenman

FDG/ms

DECLARATION OF RESTRICTIONS

Page 1

"Declaration of Restrictions recorded in O. R. Book 339, Page 111, and O. R. Book 362, Page 604, Monroe County, Florida, applicable to the following residential lots at Duck Key, Florida, to wit:"

All of Lots 1 thru 28, in Block 1, and all of Lots 1 thru 36, inclusive, Block 3, and all of Blocks 4 thru 17 inclusive, of CENTER ISLAND; all of Lots 1 thru 42 and 55 thru 139, both inclusive, Block 1, and all of Block 2 of YACHT CLUB ISLAND; and all of Blocks 1, 2, 3, 4 and 9 of PLANTATION ISLAND, DUCK KEY, Monroe County, Florida, in accordance with the Plat thereof recorded in Plat Book 5, Page 82, of the Public Records of Monroe County, Florida.

WHEREAS, it is now desired by the Subdivider to place restrictions and limitations of records as to each and every of the said Lots 1 thru 28, in Block 1, and all of Lots 1 thru 77, all inclusive, Block 2, and Lots 1 thru 36, all inclusive, Block 3, and all of Blocks 4 thru 17 inclusive, of CENTER ISLAND; all of Lots 1 thru 42 and 55 thru 139, both inclusive, Block 1, and all of Block 2, of YACHT CLUB ISLAND; and all of Blocks 1, 2, 3, 4 and 9 of PLANTATION ISLAND, in accordance with the aforementioned Plat thereof, and to limit the use to which each and every of the said lots located therein may be put.

NOW THEREFORE:

Each and every of the Lots 1 thru 28, in Block 1, and all of Lots 1 thru 77, all inclusive, Block 2, and Lots 1 thru 36, all inclusive, Block 3, and all of Blocks 4 thru 17 inclusive, of CENTER ISLAND; all of Lots 1 thru 42 and 55 thru 139, both inclusive, Block 1, and all of Block 2 of YACHT CLUB ISLAND; and all of Blocks 1, 2, 3, 4 and 9 of PLANTATION ISLAND, DUCK KEY, Monroe County, Florida, in accordance with the Plat thereof recorded in Plat Book 5, Page 82 of the Public Records of Monroe County, Florida,

are hereby restricted as follows, and all of which restrictions and limitations are intended to be and shall be taken as a consideration for any agreement for deed or any deed of conveyance hereafter made, and one of the express conditions thereof, and that said restrictions and limitations are intended to be, and shall be taken as covenants to run with the land, and binding on all of the Grantees, their heirs, administrators, Grantees or assigns, and shall be as follows, to-wit:

1. USE RESTRICTION

Each and every of the lots, located in Islands above described, shall be known and described as residential lots, and no structure shall be constructed or erected on any residential lot other than one single family dwelling not to exceed two stories in height, a one or two car garage or carport.

In addition, a boat house may be permitted on a water front lot provided, however, that its location, design, materials, structure, strength, etc. shall have been approved in writing by the Subdivider, its successors or assigns.

2. SETBACK RESTRICTIONS

No building, or any part thereof, may ever be erected nearer to the front lot line (street line) than twenty-five (25) feet, nor nearer to the interior side lot lines than ten (10) feet, nor nearer to the rear lot line than twenty (20) feet. (In the instance of a water front lot, that portion abutting the water shall be deemed to be the rear lot line.) However, screened swimming pool enclosures may be erected to within fifteen (15) feet of the rear lot line. Boat houses, as indicated in Paragraph 1 above, in the case of a water front lot, may be erected to the lot line abutting the water if approved in writing by the Subdivider, its successors or

assigns. Docks or piers may be built adjacent to the property line abutting the water providing, however, that it shall not extend into the canal and/or channel a distance of more than five (5) feet, and no cover shall be permitted to be erected in connection with any dock except temporary boat awnings (such temporary boat awnings in each instance to be approved by the Subdivider as to location, design and materials). Swimming pools, covered or uncovered, may not be constructed within twenty (20) feet of a bulkhead. All such boat houses, swimming pools, swimming pool enclosures, are subject to the ten (10) foot setback from interior side lot lines and docks are subject to a seven and one-half (7-1/2) foot setback from the interior side lot lines as projected and in each instance, the location, design and construction materials shall first be approved by the Subdivider, its successors and assigns.

For the purpose of this covenant, eaves and steps shall not be considered as a part of a building, provided, however, this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

3. RESIDENTIAL SITES AND BUILDING SIZE RESTRICTIONS

No lot shall be divided or resubdivided unless both portions of said lots be used to increase the size of an adjacent lot or the adjacent lots as platted. Divided portions of lots must extend from fronting street to existing rear property line. No residence having a floor area of less than eight hundred (800) square feet shall be erected on the following lots (see Addendum 'A'); no residence having a floor area of less than one thousand (1,000) square feet shall be erected on the following lots (see Addendum 'B'). For purposes of computing the square foot area, only that area of the building that is completely enclosed and protected from the weather and intended as the living quarters of the home shall be computed and such computation shall expressly exclude area contained in garages, carports, covered porches, roofed entranceways, or boat houses.

4. NUISANCES, TRASH, ETC.

(a) No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon, which may be or may become an annoyance or nuisance to the neighborhood.

(b) No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding, shall be used on any lot at any time as a residence, either temporarily or permanently, nor shall any trailer, tent or shack or similar structure ever be erected or placed on any lot for any reasons except that a construction shack may be used during the period of the construction of a residence. No tractor or trailers may be parked overnight on any of the streets, roads or lots in the area covered by these restrictions.

(c) No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property during the construction and sales period, or a sign used to indicate name of the resident, not to exceed one (1) square foot in area.

(d) No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

(e) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the premises conveyed, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Subdivider may enter upon said lands and remove the same at the expense of the owner, and such entry shall not be deemed a trespass.

(f) No animals, livestock or poultry of any kind shall be raised, bred or kept on said lot, except that dogs, cats and other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose. Such animals as may be kept as pets shall not be permitted to annoy the neighborhood by barking, howling, crying or the making of other such noises, nor shall they be permitted on the beach, and in each such instance such activity shall be construed and considered to be a nuisance in violation of the covenants of this restriction.

(g) No trash, garbage, debris, paper or other waste of any kind shall ever be thrown into a canal or channel; nor shall the owner ever bridge said channel in any manner whatsoever;

nor install therein or thereon, on a temporary or permanent basis, any structure, floating or otherwise, other than the dock, pier or moorings as herein permitted; or permit said channel to be obstructed so that the free movement of traffic thereon shall be affected.

5. ADDITIONAL COVENANTS PERTAINING TO WATER FRONT LOTS

(a) No lot may ever be increased in size so as to exceed its platted area by filling in the waters on which it abuts, and the same shall at all times be kept free and clear of all obstructions so that the same may be freely used for purposes of navigation.

(b) In order that the channels and/or canals may be freely navigable at all times, mooring piles, if installed, shall never be placed further than ten (10) feet from any lot line abutting the water, nor may they ever be placed nearer than seven and one-half (7-1/2) feet from the projection of the respective interior side lot lines of any lot, providing, however, that in the instance of a lot abutting on a waterway which is less than sixty (60) feet in width, such mooring piles shall not be permitted.

(c) No boat canal or other waterway may be dug or excavated into any of the water front lots unless and until its location, design, materials, structure and strength shall have been approved in writing by the Subdivider, its successors or assigns.

(d) No building or structure of any kind or nature whatsoever shall ever be built, erected, installed or permitted upon any portion of the breakwater which may be conveyed to any Grantee and when so conveyed, shall be kept by the Grantee in its present natural form at all times, except for such repairs as may, from time to time, be necessitated by erosion or storm for Grantee to maintain it.

(e) No sea wall shall be erected or constructed unless and until its location, design, materials, structure, strength, etc., shall have been approved in writing by the Subdivider, its successors or assigns.

(f) In no event shall a dock or pier or mooring piles be built or installed beyond the lot line abutting the water of any water front lot, where the canal or waterway on which the lot fronts is less than sixty (60) feet in width.

6. DRAINAGE

No changes in elevation of the land shall be made which will interfere with the drainage of or otherwise cause undue hardship to adjoining property.

7. EASEMENTS

All easements for utilities, drainage and other purposes shown on the Plat of DUCK KEY, recorded in Plat Book 5, at Page 62 of the Public Records of Monroe County, Florida, are hereby reserved as perpetual easements for maintenance and utilities and drainage installations as provided for in the easements shown on said Plat. In addition thereto, the Subdivider reserves the right to create any and all additional easements as may become necessary for the purposes hereinabove expressed, such additional easement or easements shall not exceed six (6) feet from the front, rear or side lot lines and may be set forth in any Deed of Conveyance hereinafter executed by the Subdivider, its successors or assigns. Any wall, fence, paving, planting or any other improvement located in an easement area shall be removed upon the request of the Subdivider, its successors or assigns, or any public and/or private utility using said area.

8. SANITARY FACILITIES

All sanitary facilities must meet the standards set by the Florida State Board of Health and shall include the use of septic tanks as approved by the said Board of Health. In the event that sewer lines are subsequently installed in the Subdivision, the owner of each lot abutting said sewer lines shall be obligated to pay a pro-rata share of the cost of same, according to the area of owner's said lot and, at owner's expense, to connect owner's sanitary facilities with the said sewer lines. Owner shall pay a reasonable continuous fee for the use of the said sewage system.

9. FENCES and HEDGES

No fence or hedge shall be erected or maintained on the property of this Subdivision which shall unreasonably restrict or block the view from an adjoining lot, or which shall materially impair the continuity of the general landscaping plan of the Subdivision. For this purpose, a hedge or fence shall be maintained at no greater height than five (5) feet,

and no wall or fence shall be erected or placed within the front setback lines of any lot, unless said wall or fence shall be ornamental and a desirable feature and shall not in any manner impair the general scheme of the Subdivision area. The Subdivider may, in its discretion, approve minor projections above the restricted heights for architectural features. No wall or fence of any kind whatsoever shall be constructed on any lot until after the height, type, design and location thereof shall have been approved in writing by the Subdivider, its successors and assigns.

10. ARCHITECTURAL APPROVAL

No building shall be erected nor shall alterations or additions be made to existing buildings on any lot until the design and location thereof shall have been approved in writing by a committee appointed by the Subdivider, its successors or assigns, provided, however, in the event such committee is not in existence or fails to take official action with respect to approval or disapproval of any such design or designs, or location within thirty (30) days, then such approval will not be required, provided that the design and location on the lot conform to and are in harmony with the existing structures on the lots in this Subdivision.

11. SPECIAL PROVISIONS

(a) The canals and/or channels abutting upon any of the water front lots have been reserved for the exclusive use of the Subdivider, its successors, assigns and Grantees, as stated in the recorded Plat of the Subdivision. The Subdivider reserves, by formal action in its sole discretion, the right and authority to dedicate to the use of the public any of the said canals and/or channels if, in its sole opinion, it is to the best interest of the entire development.

(b) The Subdivider, as to such lots, portions of lots or parcels to which it has legal title, reserves the right in its sole discretion to hereafter amend alter or change these covenants and restrictions and use restrictions subsequently filed from time to time by filing an amendment thereto upon the Public Records of Monroe County, Florida; and further reserves the right in its sole discretion to hereafter place of record any revisions to the Plat of Duck Key as now recorded in Plat Book 5, Page 82 of the Public Records of Monroe County, Florida.

The Subdivider reserves the right in its sole discretion at any and all times to alter, revise and amend the Plat thereof, or to replat all or part thereof, and to establish restrictions and limitations by individual deeds or grants, or by filing a subsequent Declaration of Restrictions among the Public Records of Monroe County, Florida. The golf course located on Block 5 and a portion of Blocks 4 and 6, INDIES ISLAND, is specifically not dedicated to the use of the public or the property owners of DUCK KEY. It is owned by the Subdivider and may be changed or abandoned and the land involved put to other use, sold or leased by the Subdivider. While in use as a golf course established fees will be charged for its use.

12. DURATION OF RESTRICTIONS

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

13. REMEDIES FOR VIOLATIONS

In the event of a violation or breach of any of these restrictions by any person or concern claiming by, through or under the Subdivider, or by virtue of any judicial proceedings, the Subdivider, its successors and assigns, and the lot owners, or any of them jointly or severally shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing, the Subdivider, its successors or assigns, shall have the right whenever there shall have been built on any lot or tract any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration

of Restrictions, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

14. SEVERABILITY

Invalidation or removal of any one of these covenants by judgment decree court order or amendment by the Subdivider, its successors or assigns, shall in no wise affect any of the other provisions, which shall remain in full force and effect.

15. DEFINITION OF "SUCCESSORS AND ASSIGNS"

As used in these restrictions, the term "Subdivider" shall always be deemed to include its successors or assigns and the words "successors or assigns" shall not be deemed to refer to an individual purchaser of a lot or lots in this Subdivision from the Subdivider, but shall be deemed to refer to the successors or assigns of legal or equitable interests of the Subdivider, who are designated as such by an instrument in writing signed by the Subdivider and recorded among the Public Records of Monroe County, Florida, specifically referring to this provision of these restrictions.

16. WRITTEN APPROVAL OF SUBDIVIDER

Wherever provision is herein made requiring the written consent and/or approval of the Subdivider, if the Subdivider fails to take action and to either approve or disapprove within thirty (30) days from receipt of any such written request, then such approval and/or consent will not be required.

ADDENDUM 'A'

No residence having a floor area of less than eight hundred (800) square feet shall be erected on the following lots:

CENTER ISLAND

All of Lots 1 thru 36, all inclusive, Block 3, all of Blocks 4 thru 17 inclusive;

All in Section 2, Parts 1 and 2 of DUCK KEY, according to the Plat thereof recorded in Plat Book 5, Page 82 of the Public Records of Monroe County, Florida.

ADDENDUM 'B'

No residence having a floor area of less than one thousand (1,000) square feet shall be erected on the following lots:

CENTER ISLAND

All of Lots 1 thru 28, in Block 1; all of Lots 1 thru 77, all inclusive, Block 2;

All in Section 2, Parts 1 and 2 of DUCK KEY, according to the Plat thereof recorded in Plat Book 5, Page 82 of the Public Records of Monroe County, Florida.

PLANTATION ISLAND

All of the lots contained in Blocks 1, 2, 3 4 and 9;

All in Section 3, Parts 1 and 2 of DUCK KEY, according to the Plat thereof, recorded in Plat Book 5, Page 82, of the Public Records of Monroe County, Florida.

YACHT CLUB ISLAND

All of Lots 1 thru 42 inclusive, and Lots 55 thru 139 inclusive, Block 1, and all of Block 2;

All in Section 4 of DUCK KEY, according to the Plat thereof, recorded in Plat Book 5, Page 82, of the Public Records of Monroe County, Florida.