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**CERTIFICATE OF AMENDMENT TO BYLAWS**  
**OF SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION**  
**INCORPORATED**

The undersigned, being the President and Vice President of **SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION, INCORPORATED**, a Florida non-profit corporation, hereby certify that in accordance with the requirements of the Florida law and the Association's Bylaws, the lot owners affirmatively voted to amend the Bylaws as set forth on the attached Exhibit "A".

COPY

IN WITNESS WHEREOF, the undersigned President and Vice President of **SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION, INCORPORATED**, have executed this Certificate of Amendment to Bylaws, this 23rd day of January, 1995.

COPY

**SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION, INCORPORATED**

BY: Robert R. Gestrich  
Robert R. Gestrich  
President

ATTEST:

BY: James B. Johnson  
James B. Johnson  
Vice President

(CORPORATE SEAL)

COPY

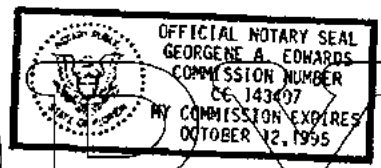
DR 1046 PG 1025

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **ROBERT R. GESTRICH** and **JAMES B. JOHNSON**, personally known to me or presented the following identification

01A  
WITNESS my hand and official seal in the State and County last aforesaid, this 23rd  
day of January, 1995.

*George A. Edwards*  
Notary Public  
*George A. Edwards*  
Printed name of notary



THIS INSTRUMENT PREPARED BY: CHARLES W. MCKINNON, ESQ., MCKINNON & MCKINNON, CHARTERED, 3405 OCEAN DRIVE, VERO BEACH, FL 32963.

RETURN TO

OR 1046Pg 1026

**EXHIBIT "A"**

**AMENDED AND RESTATED BYLAWS OF SMUGGLER'S COVE  
COVE PROPERTY OWNERS' ASSOCIATION, INCORPORATED,**

**ARTICLE I**

**COPY**

1.1 The corporation is located in Indian River County, Florida, and its office shall be the residence of the incumbent President from year to year.

1.2 The corporate seal shall have engraved thereon the following:

**"SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION,  
INCORPORATED, A NON-PROFIT CORPORATION, INCORPORATED  
1973 FLORIDA"**

It shall remain in the custody of the Secretary and shall be affixed to all instruments in writing requiring the corporate seal for complete execution. An impression thereof is directed to be affixed to these Bylaws.

1.3 The fiscal year of the corporation shall begin on the first day of March and terminate on the last day of February.

**COPY**

**ARTICLE II - MEMBERSHIP**

2.1 **MEMBERS.** The members of the Association shall be the fee simple title holders of the single family residential lots embraced within the plat of Smuggler's Cove.

2.2 The use, possession and enjoyment of any parcel of real estate embraced within the plat of Smuggler's Cove shall subject the user and/or owner of the property to the covenants and restrictions of the Association.

2.3 Membership shall terminate whenever a member shall be divested of fee simple title to his parcel of real estate within Smuggler's Cove. A member shall have no vested right, interest or privilege of, in, or to the assets, functions, affairs or franchises of the Association, or any right, interest or privilege which may be transferable or inheritable or which shall continue after his membership ceases, or while he is not in good standing.

2.4 A member who fails or refuses to abide by the covenants and restrictions of the Association as adopted, and as may be amended from time to time, or who refuses or fails to pay any assessments levied by the Association shall not be entitled to vote or exercise any other rights of a member in the Association, until such deficiencies are cured. An owner and his lot shall remain subject to all of the covenants and restrictions of the Association and subject to assessment during such period of time.

## 2.5 Voting

a. Each dwelling lot, regardless of size, or whether or not it is improved, shall be entitled to two (2) votes.

b. If a lot or lots are owned by one (1) or two (2) persons, each person's right to vote will be established by the record title to said lot(s). If a lot or lots are owned by more than two (2) people, the persons entitled to cast the vote shall be designated by a written authorization signed by all of the record owners of the lots and filed with the Secretary or Assistant Secretary of the Association.

c. If a lot or lots are owned by a corporation, the person entitled to cast the vote shall be designated by written authorization signed by the President and attested by the Secretary of the corporation.

d. All such authorizations shall be valid until revoked or until superseded by subsequent authorization or until there is a change in ownership. If such an authorization is not on file, the vote of such owners shall not be considered for any purpose.

2.6 Votes may be cast in person or by written proxy. A proxy may be made by any person entitled to vote and will be valid only for the particular meeting designated in the proxy and must be filed with the Secretary or Assistant Secretary of the Association before the appointed time of the meeting or any adjournment of the meeting.

## ARTICLE III - MEETING OF THE MEMBERS

3.1 **Annual Meetings:** There shall be an annual meeting of the members of the Corporation at such place as may be designated by the Board of Directors on the last Tuesday in February of each year if not a legal holiday under the laws of the State of Florida and, if a legal holiday, then on the next succeeding business day at 7:30 p.m. for the transaction of such business as may come before the meeting. The Secretary shall serve personally or send through the post office at least ten (10) days before such meeting, notice thereof, addressed to each member at his last known address.

3.2 **Election:** At such annual meeting of the Corporation, the active members shall elect three (3) members as a nominating committee who shall not less than thirty (30) days prior to the next meeting, propose seven (7) active members as Directors, one (1) of whom shall be the past President. Nominations for the position of Director may be made from the floor. Said proposed Directors shall be confirmed and elected by ballot, a majority of all the votes cast being necessary to confirm and elect. Written ballot may be dispensed with by a majority vote of those persons present at the meeting in person or by proxy and the vote taken viva voce. Directors are elected for a term of one (1) year.

**3.3 Special Meetings:** Special meetings of the members shall be held whenever called by the Board of Directors or by the holders of at least one-third (1/3) of the active membership. Notice of such special meeting, stating the time, place and, in general terms, the purpose or purposes thereof, shall be given at the last known address for all active members at least ten (10) days prior to said meeting.

**3.4 Order of Business:** At each annual meeting of the Corporation, the following shall be the order of business:

- a. Roll call and introduction of new members.
- b. Proof of notice of meeting.
- c. Reading the minutes of the preceding meeting or meetings.
- d. Report of the President.
- e. Report of the Secretary.
- f. Report of the Treasurer.
- g. Report of the Nominating Committee.
- h. Election of Directors.
- i. Election of the Nominating Committee.
- j. Unfinished business including committee reports.
- k. New business.
- l. Adjournment.

The order of business may be modified or changed at any meeting at the discretion of the President.

**3.5** A quorum at members' meetings shall consist of twenty-five percent (25%) of the total number of votes of the entire active membership. The acts thus approved shall constitute the acts of the membership except when approval by a greater number of members is required by the Articles of Incorporation or these Bylaws.

**3.6** The membership may, at the discretion of the Board of Directors, act by written ballot in lieu of a meeting, provided written notice of the matter or matters to be voted upon is given to each member in the same manner and within the same time frame as provided in Paragraph 3.3 hereof. The notice shall set forth a time period for response, and the number of votes cast in response must at least constitute a quorum in order for the results of the ballot to be effective.

#### ARTICLE IV - BOARD OF DIRECTORS

**4.1 Number of Members:** The business and affairs of this Corporation shall be managed by a Board of Directors which shall consist of seven (7) active members of the Corporation. Such Directors shall be confirmed and elected by the active membership at their annual meeting as provided in Article III of these Bylaws. Each of the members of the Board of Directors shall be an active member of the corporation.

4.2 **Executive Committee.** The Board of Directors may elect from their number an Executive Committee consisting of less than all members of the Board for the investigation and recommendation of appropriate matters or projects of common concern.

4.3 **Regular Meetings.** The Board shall meet for the transaction of business at such place as may be designated from time to time.

4.4 **Special Meetings.** Special meetings of the Board of Directors may be called by the President or by three (3) members of the Board for any time and place, provided reasonable notice of such meetings shall be given to each member of the Board before the time appointed for such meeting.

4.5 **Quorum.** The Directors shall act only as a Board, and the individual Directors shall have no power as such. A majority of the Directors shall constitute a quorum for the transaction of business, but a majority of those present at the time and place of any regular or special meeting, although less than a quorum, may adjourn the same from time to time without notice until a quorum be at hand. The act of a majority of Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise provided herein or by law.

4.6 **Order of Business.** The Board of Directors may from time to time determine the order of business at its meeting.

4.7 At all meetings of the Board of Directors, the President, or in his absence, the Vice President, or in the absence of both, the Second Vice President, shall preside.

4.8 **Annual Report.** The Board of Directors at the annual meeting shall prepare and make available to members of the Corporation a report as to the condition of the Corporation and its property and shall also make available an account of the financial transaction of the past year prepared by the Treasurer.

4.9 **Vacancies in Board.** Should a vacancy occur at any time during a term for any reason in the membership of the Board of Directors, then a majority of the remaining members of the Board of Directors shall have the power to select a person to fill such vacancy until the next meeting.

4.10 The Board of Directors shall not be liable or responsible for the destruction or the loss of, or damage to, the property of any member or the guest of any member, or visitor, or other person.

4.11 The Board of Directors may make and establish reasonable rules and regulations governing the improvement, use, and maintenance of property in Smuggler's Cove. Such rules and regulations shall be confirmed at any regular or special meeting of the members of the Corporation or by written ballot by two-thirds (2/3) majority of the votes cast and shall be made

a part of these Bylaws and may only be amended, altered, or rescinded in the same manner as the Bylaws of this Corporation. The Declarations of Restrictions for Smuggler's Cove, presently recorded on the public records of Indian River County, and such amendments thereto as from time to time are made, are incorporated in these Bylaws by reference, and the Board of Directors is charged with the responsibility of insuring compliance with said restrictions.

## ARTICLE V - OFFICERS

5.1 **Officers.** The officers of the Corporation shall be President, First Vice President, Second Vice President, Secretary and Treasurer, who shall be elected by the Board of Directors at its first meeting held after the annual meeting of the membership. They shall take office immediately after election. The officers of the Corporation shall be members of the Board of Directors and active members of the Corporation.

5.2 **The President:** Subject to the direction of the Board of Directors, the President shall be the chief executive officer of the Corporation and shall perform such other duties as from time to time may be assigned to him by the Board. The President shall be an ex-officio member of all committees.

5.3 **The Vice President.** The Vice Presidents shall have such power and perform such duties as may be assigned to them by the Board of Directors or the President. In the case of the absence or disability of the President, the duties of that officer shall be performed by the First Vice President or the Second Vice President.

5.4 **The Secretary:** The Secretary shall keep the minutes of all proceedings of the Board of Directors and the minutes of the members' meetings in books provided for the purpose; shall have custody of the corporate seal and such books and papers as the Board may direct; shall, in general, perform all duties incident to the office of Secretary, subject to the control of the Board of Directors and the President, and shall perform such other duties as may from time to time be assigned by the Board or the Treasurer.

5.5 **The Treasurer:** The Treasurer shall have the custody of all receipts, disbursements, funds and securities of the Corporation and shall perform all duties incident to the office of the Treasurer, subject to the control of the Board of Directors and the President and shall perform such other duties as may from time to time be assigned by the Board of Directors or the President. If required by the Board, the Treasurer shall give a bond for the faithful discharge in such sum as the Board may require.

5.6 **Subordinate Officers:** The President, with the approval of the Board of Directors, may appoint such other officers and agents as the Board may deem necessary, who shall hold office during the pleasure of the Board, and who shall have such authority and perform such duties as from time to time may be prescribed by the President or the Board.

5.7 All vacancies, in any office, shall be filled by the Board of Directors without undue delay at its regular meeting or at a meeting specially called for that purpose.

5.8 All officers of the Corporation shall serve without compensation.

#### ARTICLE VI - FISCAL MANAGEMENT

6.1 **Fiscal Management:** The Board of Directors shall adopt a budget for each fiscal year which shall include the estimated funds required in order for the Corporation to perform its functions properly.

6.2 **Annual assessments** shall be made by the Board of Directors against the owners of each lot and against each lot located on the lands embraced within the plat of Smuggler's Cove. Assessments for each lot shall not exceed \$150.00 per year; except upon approval by a two-thirds (2/3) majority of all of the votes of the members. Assessments shall be made for the fiscal year annually in advance of the year for which the assessments are made. Such assessments shall be due within ten (10) days after the commencement of each fiscal year and shall be considered delinquent if not paid by April 1st of each said year. If an annual assessment is not made by the Board of Directors as required, an assessment shall be presumed to have been made in the amount of the last prior assessment. In the event that the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. The unpaid assessment for the remaining portion of any fiscal year for which an amended assessment is made shall be due within thirty (30) days after its adoption by the Board of Directors.

6.3 The Association shall have a lien for delinquent assessments upon each lot in Smuggler's Cove for the amount of the unpaid assessment together with interest from the date the same became delinquent, and together with all costs of collecting such assessments, including reasonable attorney's fees, whether suit be brought or not. Additionally, the record owners of such lots shall be personally liable for all such assessments and expenses. The Association may take such action as the Board of Directors deems necessary to collect assessments and expenses by personal action against any owner, or by enforcing and foreclosing the said lien, and may settle or compromise the same, if in the best interest of the Association. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. Such lien shall be effective from and after the time of recording of the same on the public records of Indian River County, Florida. A claim of lien stating the description of the property encumbered thereby, the name of the record owner, the amount due and the date when due, shall constitute a valid lien until all sums secured thereby, and all costs of foreclosure or collection, including reasonable attorney's fees, whether suit be brought or not, shall have been fully paid. Upon demand, the Association shall furnish to any owner or mortgagee or person interested, a certificate showing the unpaid assessments against any lot in Smuggler's Cove.



6.4 The depository of the Association shall be such bank or banks, or other financial institutions, including accounts with stock brokerage firms having a seat on the New York Stock Exchange, as shall be designated from time to time by the Board of Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Board of Directors.

#### ARTICLE VII - COMMITTEES

7.1 **Committees:** In addition to the Nominating Committee, the Board of Directors may create such standing and special committees as they determine necessary, and the President shall appoint the Chairman of any such committee from the active membership of the Corporation. The Chairman of each committee thus appointed may select such active members as they deem necessary to assist the committee in the discharge of its assigned duties.

#### ARTICLE VIII - BILLS, NOTES, CONTRACTS, ETC.

8.1 All bills payable, notes, checks or the negotiable instruments of the Corporation shall be made in the name of the Corporation and shall be signed by the President or Vice President and the Treasurer, or by such other officer or officers as the Board of Directors shall from time to time direct. No officer or agent of the Corporation, either singly or jointly with others, shall have the power to make any bill payable, note, check, draft or warrant of the Corporation, or contract or cause to be contracted any debt or liability in the name or on behalf of the Corporation except as herein expressly prescribed and provided.

#### ARTICLE IX - NOTICE

9.1 **Notices:** Whenever, according to these Bylaws, notice shall be required to be given to any member or Director, it shall not be construed to mean a personal notice, but such notice may be given in writing by depositing the same in a post office in Indian River County, Florida, in a postpaid sealed wrapper, addressed to such member or Director at his address as the name appears on the books of the Corporation, and the time when such notice is mailed shall be deemed the time of giving of such notice.

#### ARTICLE X - AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS

10.1 Except where a larger vote is required, these Bylaws of the Corporation may be amended, altered, or rescinded only by a two-third (2/3) majority of the votes cast in person or by proxy at any regular meeting or any special meeting called for that purpose, or pursuant to a written ballot to which a quorum responds, provided that the proposed amendment be submitted in writing at least thirty (30) days before the meeting at which they voted upon, or the due date of the ballot.

**ARTICLE XI - PARLIAMENTARY RULES**

**11.1** The Modern Rules of Order (latest edition), published by the Pennsylvania Bar Institute, shall govern the conduct of Corporation meetings when not in conflict with the Articles of Incorporation or these Bylaws.

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**CERTIFICATE OF AMENDMENT TO DECLARATION OF RESTRICTIONS  
FOR SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION  
INCORPORATED**

The undersigned, being the President and Vice President of SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION, INCORPORATED, a Florida non-profit corporation, hereby certify in accordance with the requirements of the Florida Law and of the Declaration of Restrictions recorded in Official Record Book 358, Page 318 of Indian River County, Florida, the lot owners affirmatively voted to amend the Declaration of Restrictions as set out on the attached Exhibit "A".

IN WITNESS WHEREOF, the undersigned President and Vice President of SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION, INCORPORATED, have executed this Certificate of Amendment to Declaration of Restrictions, this 23rd day of January 1995.

SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION, INCORPORATED

BY: Robert R. Gestrich  
Robert R. Gestrich  
President

ATTEST:

(CORPORATE SEAL) BY: James B. Johnson  
James B. Johnson  
Vice-President

OR 1046 Pg 1035

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared **ROBERT R. GESTRICH** and **JAMES B. JOHNSON**, personally known to me or presented the following identification

n/a

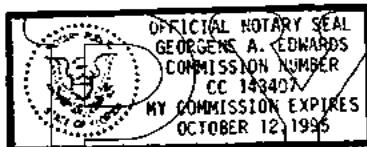
WITNESS my hand and official seal in the State and County last aforesaid, this 23rd day of January, 1995.

COPY

*Georgene A. Edwards*  
Notary Public

Georgene A. Edwards  
Printed name of notary

COPY



COPY

RETURN TO:

THIS INSTRUMENT PREPARED BY; CHARLES W. MCKINNON, ESQ., MCKINNON & MCKINNON, CHARTERED, 3405 OCEAN DRIVE, VERO BEACH, FL 32963.

DR1046PG1036

EXHIBIT "A"

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS  
FOR SMUGGLER'S COVE PROPERTY OWNERS' ASSOCIATION,  
INCORPORATED, AN ASSOCIATION OF SMUGGLER'S COVE,  
PLAT BOOK 8, PAGE 29, PUBLIC RECORDS OF INDIAN RIVER  
COUNTY, FLORIDA

Smuggler's Cove Property Owners' Association, Incorporated, an Association of the owners of the lots in Smuggler's Cove, according to the plat thereof recorded in Plat Book 8, Page 29, public records of Indian River County, Florida, hereby adopt this Amended and Restated Declaration of Restrictions for Smuggler's Cove to supersede and replace the original Declaration of Restrictions and the amended Declaration of Restrictions recorded in Official Record Book 358, Page 318, and Official Record Book 684, Page 1224, public records of Indian River County, Florida.

1. **LAND USE AND BUILDING TYPE.** No lot shall be used except for residential purposes and only one residence for occupancy by a single family may be erected on each lot. For use with such residence, appropriate buildings for guest house, servant's quarters, garages, AND tool house, shall be permitted upon any one lot in said subdivision. Such auxiliary building or buildings shall be constructed simultaneously with or subsequent to (never before) erection of the residence. Such auxiliary building shall be constructed of the same materials and shall be of the same architectural design as the residence. Should the same materials no longer be available, the Association, acting through its Architectural Control Committee, may approve suitable alternate materials.

2. **BUILDING LOCATIONS.** No building shall be located on any lot nearer to the front lot line than the minimum building set back lines as shown on the recorded plat. All or some buildings may be located behind set back lines as shown on the recorded plat of Smuggler's Cove Property Owners' Association, Incorporated, hereinafter referred to as "Association", deems it desirable.

3. **ARCHITECTURAL CONTROL.** No dwelling house, swimming pool, fence, hedge, sign, wall, grading, planting of any character, trimming or major pruning of Live Oak Trees, or other structure or facility shall be commenced, erected, or maintained, nor shall any alteration, or addition or change be made on any lot, or to the buildings located on any lot, which affects the exterior appearance thereof until the plans and specifications therefor, showing to the extent applicable, the nature, kind, shape, height, grade, materials, floor plans, driveway location, color scheme, architectural style, location and approximate cost of such structure or work to be done and grading plan of the lot to be built upon, showing topographical data and surface drainage, shall have been

submitted to and approved in writing by the Association, acting through its Architectural Control Committee. The association, acting through its Architectural Control Committee, shall have the right to refuse to approve any such plans, specifications and grading plans. It shall have the right to take into consideration the suitability of the proposed building or other structures and of the materials with which it is to be built to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effects of the building or other structure as planned on the outlook from the adjacent or neighbor property, as to which harmonious and pleasing elevations are to be provided. Any and all tanks must be buried below ground level. The Association, acting through its Architectural Control Committee, shall set all house grades. Except where otherwise required by Building Codes, the first floor level shall be no more than twenty-four (24) inches above the road level, and the maximum ridge height shall be no more than twenty-six (26) feet above first floor level.

All plans and specifications required to be approved or disapproved by these restrictions shall be submitted to the Association at the residence address of the Chairman of the Architectural Control Committee. The Association, acting through its Architectural Control Committee, shall approve or disapprove said plans and specifications in writing within thirty (30) days from the date of their submission.

4. **THE ASSOCIATION.** Each lot-owner shall be required to pay annually to Smuggler's Cove Property Owners' Association, Incorporated, his share of the costs to provide, maintain and repair the roads, entrance way, lighting, easements and ocean walkway, and the costs of providing other reasonable and necessary community services, as provided for in the Bylaws of the Association from time to time. Each lot owner's assessment shall be paid promptly when the same becomes due. In the event of a lot owner's failure to pay an assessment promptly when due, the assessment shall constitute a lien upon the lot owner's property within the subdivision. The Association shall have a lien for delinquent assessments upon each lot in Smuggler's Cove for the amount of the unpaid assessment, together with interest from the date the same became delinquent, and together with all costs of collecting such assessments, including reasonable attorneys' fees, whether suit be brought or not. Additionally, the record owners of such lots shall be personally liable for all such assessments and expenses. The Association may take such action as it deems necessary to collect assessments and expenses by personal action against any owner or by enforcing and foreclosing its lien, and may settle or compromise the same, if in the best interest of the Association. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. Such liens shall be effective from and after the time of recording of a Claim of Lien on the public records of Indian River County, Florida. A Claim of Lien stating the description of the property encumbered thereby, the name of the record owner, the amount due and the date when due shall constitute a valid lien until all sums

secured thereby and all the costs of foreclosure or collection, including reasonable attorney's fees, whether suit be brought or not, shall have been fully paid. The annual assessment shall be set by the Association in accordance with the provisions of its Articles of Incorporation and Bylaws.

Each owner of a lot within the subdivision, by acceptance of his deed to the property or by executing this Amended Declaration of Restrictions, agrees to abide by the Articles of Incorporation, the Bylaws and Rules and Regulations now existing and as amended or adopted from time to time, of the Smuggler's Cove Property Owners' Association, Incorporated.

5. **EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

6. **NUISANCES.** No animal, fowl or livestock of any kind shall be kept or harbored on any lot in said subdivision. The keeping within any dwelling house of one domestic dog or cat is hereby permitted, so long as such dog or cat does not become a nuisance to the owners or occupants of lots in the subdivision.

7. **MISCELLANEOUS RESTRICTIONS.**

(a) No structure of a temporary character, trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot in this subdivision as a residence.

(b) No office, whether commercial or professional, shall be installed, maintained or operated in any residence in said subdivision.

(c) Each lot owner is required to install an illuminated post light in front of his or her home, design and location to be set by the Association, acting through its Architectural Control Committee.

(d) No boats, trucks or trailers shall be stored or parked in the streets, yards or driveways in this subdivision.

(e) (i) No debris, garbage or rubbish shall be permitted on any of the lots in said subdivision, except as may be stored in any approved container made for the purpose to be buried or kept in garage or house. Any unnecessary debris left on any

lot during or after the construction of a dwelling house thereon may be removed by the Association, and the Owner of such lot shall be liable to the Association for the cost of such removal. Lawns shall be mowed regularly and landscaping trimmed so as to present a neat and well kept appearance. The external appearance of all structures in the subdivision shall be maintained in conformance with the general standards of other similar structures within the subdivision.

- (ii) Any lot which does not have a dwelling on it must be mowed at least once in each calendar quarter of each year and kept in a neat condition at all times. Palm trees on any such lot must be pruned at least once a year. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any such lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

(f) No clothes, sheets, blankets or other articles shall be hung out or exposed on any part of said premises except in the rear yards on portable laundry dryers.

(g) No sign of any character shall be erected, posted or displayed upon or about any lot in said subdivision without the written permission of the Association.

(h)

(i) The Association is granted the right, in case of any violation or breach of any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions herein contained, to enter the property upon or as to which such violation or breach exists, and summarily abate and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof as interpreted by said Association, and the Association shall not, by reason thereof, be deemed guilty of any manner or trespass for such entry, abatement, or removal.

(ii) In the event of any violation of Section 7(e) (ii) of this Declaration of Restrictions, and the cure and/or abatement thereof



by the Association in accordance with the foregoing Section 7(h) (i) of this Declaration of Restrictions, the Association shall have a lien upon the lot(s) for the amount of any or all costs and expenses incurred by the Association in abating or curing the violation, together with the costs of collecting such sums, including reasonable attorney's fees, whether suit be brought or not. Additionally, the record Owner(s) of such lot shall be personally liable for all such costs and expenses. The Association may take such action as it deems necessary to collect any such costs and expenses by personal action against any Owner, or by enforcing and foreclosing its lien, and may settle or compromise the same, if in the best interest of the Association. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. Such lien shall be effective from and after the time of recording of the Claim of Lien on the Public Records of Indian River County, Florida. A Claim of Lien stating the description of the property encumbered thereby, the name of the record Owner, the amount due and the date when due, shall constitute a valid lien until all sums secured thereby and all of the costs of foreclosure or collection, including reasonable attorney's fees, whether suit be brought or not, shall have been fully paid.

(iii) A failure of said Association to enforce any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions contained herein shall in no event be construed, taken or held to be a waiver thereof, or acquiescence in or consent to any continuing further or succeeding breach or violation thereof, and the Association shall at any and all times have the right to enforce the same. Enforcement of these covenants shall be by action by any lot owner or by Smuggler's Cove Property Owners' Association, Incorporated, against any person or persons violating or attempting to violate any covenants, either to restrain violation or to recover damages. In the event that the person or entity bringing the action to enforce these covenants shall prevail in that action, such person or entity shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the court may judge to be reasonable for the services of his attorney.

(i) No grantee or successor in title shall subdivide or convey less than the whole of any lot without first obtaining the written consent of the Association.

(j) In all instances where plans and specifications are required to be submitted to and are approved by the Association, if subsequent thereto, there shall be any variance in the actual construction and location of any improvements covered thereby, any such variance shall be deemed a violation of these restrictions.

(k) A lot owner may lease his residence but only for a period of four (4) or more consecutive months. Every lease of a lot owner's residence shall provide that the lessee shall comply with and abide by the Bylaws of the Association and all of the covenants and restrictions pertaining to the use of the property in Smuggler's Cove as outlined herein or hereafter established by Smuggler's Cove Property Owners' Association, Incorporated, or its properly designated agents. Lot owners who lease their residence shall provide their tenant(s) with copies of said Bylaws, covenants and restrictions and shall provide the President of the Association with a copy of such leases and list of all occupants of the premises pursuant to the lease within ten (10) days of the execution of the lease.

8. **RIGHT TO MODIFY.** The Association may, with the consent of the owners of record of two-thirds (2/3) of the lots in Smuggler's Cove, annul, waive, change or modify any of the covenants, reservations and restrictions herein contained as to any lot in said plat. any such amendment to be effective must be recorded on the public records of Indian River County, Florida.

9. **DURATION AND RENEWAL.** All the covenants, agreements, easements, reservations and restrictions contained herein shall be in force until January 1, 1991, after which time said covenants, agreements, easements, reservations and restrictions shall be automatically extended for successive periods of ten (10) years, unless terminated, or modified in writing by the then owners of eighty percent (80%) of the lots in the subdivision. Said termination or modification of these restrictions to be effective must be recorded prior to the automatic extension date.

file 123

**COPY**  
RETURN TO  
380204  
MCKINNON & STEWART, CHARTERED  
POST OFFICE BOX 3345  
VERO BEACH, FLORIDA 32964-3345

**AMENDED DECLARATION OF RESTRICTIONS FOR  
SMUGGLER'S COVE, PLAT BOOK 8, PAGE 29,  
PUBLIC RECORDS OF INDIAN RIVER COUNTY, FLORIDA**

The undersigned, constituting the owners of record of at least two-thirds (2/3) of the lots in Smuggler's Cove, according to the plat thereof recorded in Plat Book 8, Page 29, public records of Indian River County, Florida, consent to the adoption of this Amended Declaration of Restrictions for Smuggler's Cove to replace the existing Declaration of Restrictions recorded in Official Record Book 358, Page 318, public records of Indian River County, Florida, which such Amended Declaration of Restrictions is hereby adopted by the subdivision Architectural Control Committee.

**1. LAND USE AND BUILDING TYPE.**

No lot shall be used except for residential purposes and only one residence for occupancy by a single family may be erected on each lot. For use with such residence, appropriate buildings for guest house, servant's quarters, garages, tool house, shall be permitted upon any one lot in said subdivision. Such auxiliary building or buildings shall be constructed simultaneously with or subsequent to (never before) erection of the residence. Such auxiliary buildings shall be constructed of the same materials and shall be of the same architectural design as the residence. Should the same materials no longer be available, the Association, acting through its Architectural Control Committee, may approve suitable alternate materials.

**2. BUILDING LOCATIONS.**

No building shall be located on any lot nearer to the front lot line than the minimum building set back lines as shown on the recorded plat. All of some buildings may be located behind set back lines as shown on the recorded plat if Smuggler's Cove Property Owners' Association, Incorporated, hereinafter referred to as "Association", deems it desirable.

**3. ARCHITECTURAL CONTROL.**

No dwelling house, swimming pool, fence, hedge, sign, wall, grading, planting of any character, trimming or major pruning of Live Oak Trees, or other structure or facility shall be commenced, erected, or maintained, nor shall any alteration, or addition or change be made on any lot, or to the buildings located on any lot, which affects the exterior appearance thereof

This instrument prepared by:  
William J. Stewart, Esq.  
P. O. Box 3345  
Vero Beach, FL 32964-3345



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until the plans and specifications therefor, showing to the extent applicable, the nature, kind, shape, height, grade, materials, floor plans, driveway location, color scheme, architectural style, location and approximate cost of such structure or work to be done and grading plan of the lot to be built upon, showing topographical data and surface drainage, shall have been submitted to and approved in writing by the Association, acting through its Architectural Control Committee. The Association, acting through its Architectural Control Committee, shall have the right to refuse to approve any such plans, specifications and grading plans. It shall have the right to take into consideration the suitability of the proposed building or other structures and of the materials with which it is to be built to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effects of the building or other structure as planned on the outlook from the adjacent or neighboring property, as to which harmonious and pleasing elevations are to be provided. Any and all tanks must be buried below ground level. The Association, acting through its Architectural Control Committee, shall set all house grades. Except where otherwise required by Building Codes the first floor level shall be no more than twenty-four (24) inches above the road level, and the maximum ridge height shall be no more than twenty-six (26) feet above first floor level.

All plans and specifications required to be approved or disapproved by these restrictions shall be submitted to the Association at the residence address of the Chairman of the Architectural Control Committee. The Association, acting through its Architectural Control Committee, shall approve or disapprove said plans and specifications in writing within thirty (30) days from the date of their submission.

#### 4. THE ASSOCIATION.

Each lot owner shall be required to pay annually to Smuggler's Cove Property Owners' Association, Incorporated, his share of the costs to provide, maintain and repair the roads, entrance way, lighting, easements and ocean walkway, and the costs of providing other reasonable and necessary community services, as provided for in the Bylaws of the Association from time to time. Each lot owner's assessment shall be paid promptly when the same becomes due. In the event of a lot owner's failure to pay an assessment promptly when due, the assessment shall constitute a lien upon the lot owner's property within the subdivision. The Association shall have a lien for delinquent assessments upon each lot in Smuggler's Cove for the amount of



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the unpaid assessment, together with interest from the date the same became delinquent, and together with all costs of collecting such assessments, including reasonable attorneys' fees, whether suit be brought or not. Additionally, the record owners of such lots shall be personally liable for all such assessments and expenses. The Association may take such action as it deems necessary to collect assessments and expenses by personal action against any owner or by enforcing and foreclosing its lien, and may settle or compromise the same, if in the best interest of the Association. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages may be foreclosed in the State of Florida. Such liens shall be effective from and after the time of recording a Claim of Lien in the public records of Indian River County, Florida. A Claim of Lien stating the description of the property encumbered thereby, the name of the record owner, the amount due and the date when due shall constitute a valid lien until all sums secured thereby and all the costs of foreclosure or collection, including reasonable attorneys' fees, whether suit be brought or not, shall have been fully paid. The annual assessment shall be set by the Association in accordance with the provisions of its Articles of Incorporation and Bylaws.

Each owner of a lot within the subdivision, by acceptance of his deed to the property or by executing this Amended Declaration of Restrictions, agrees to abide by the Articles of Incorporation, the Bylaws and Rules and Regulations now existing and as amended or adopted from time to time, of the Smuggler's Cove Property Owners' Association, Incorporated.

5. EASEMENTS.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

6. NUISANCES.

No animal, fowl or livestock of any kind shall be kept or harbored on any lot in said subdivision. The keeping within any dwelling house of one domestic dog or cat is hereby permitted, so long as such dog or cat does not become a nuisance to the owners or occupants of lots in the subdivision.

7. MISCELLANEOUS RESTRICTIONS.

(a) No structure of a temporary character, trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot in this subdivision as a residence.

(b) No office, whether commercial or professional, shall be



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installed, maintained or operated in any residence in said subdivision.

(c) Each lot owner is required to install an illuminated post light in front of his or her home, design and location to be set by the Association, acting through its Architectural Control Committee.

(d) No boats, trucks or trailers shall be stored or parked in the streets, yards or driveways in this subdivision.

(e) No debris, garbage or rubbish shall be permitted on any of the lots in said subdivision, except as may be stored in an approved container made for the purpose to be buried or kept in garage or house. Any unnecessary debris left on any lot during or after the construction of a dwelling house thereon may be removed by the Association and the owner of such lot shall be liable to the Association for the cost of such removal. Lawns shall be mowed regularly and landscaping trimmed so as to present a neat and well kept appearance. The external appearance of all structures in the subdivision shall be maintained in conformance with the general standards of other similar structures within the subdivision.

(f) No clothes, sheets, blankets or other articles shall be hung out or exposed on any part of said premises except in the rear yards on portable laundry dryers.

(g) No sign of any character shall be erected, posted or displayed upon or about any lot in said subdivision without the written permission of the Association.

(h) The Association is granted the right, in case of any violation or breach of any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions herein contained, to enter the property, upon or as to which such violation or breach exists, and summarily abate and remove, at the expense of the owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof as interpreted by said Association, and the Association shall not, by reason thereof, be deemed guilty of any manner of trespass for such entry, abatement or removal. A failure of said Association to enforce any of the restrictions, rights, reservations, limitations, agreements, covenants and conditions contained herein shall in no event be construed, taken or held to be a waiver thereof, or acquiescence in or consent to any continuing further or succeeding breach or violation thereof, and the Association shall at any and all times have the right to enforce the same. Enforcement of these covenants shall be by action by any lot owner or by Smuggler's Cove Property Owners' Association, Incorporated, against any person or

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persons violating or attempting to violate any covenants, either to restrain violation or to recover damages. In the event that the person or entity bringing the action to enforce these covenants shall prevail in that action, such person or entity shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the court may judge to be reasonable for the services of his attorney.

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IN WITNESS WHEREOF, the undersigned have signed and sealed these presents on the following pages as of the 28<sup>th</sup> day of January, 1984.



COPY

Architectural Control Committee

By Joseph F. Rakowsky  
Joseph F. Rakowsky

STATE OF FLORIDA  
COUNTY OF INDIAN RIVER

BEFORE ME, personally appeared JOSEPH F. RAKOWSKY to me well known and known to me to be the person described in and who executed the foregoing instrument and acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 27<sup>th</sup> day of March, 1984.

Katherine G. Smith  
Notary Public State of Florida  
at Large. My Commission Expires:  
3-28-85

NOTARY SEAL

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