

Prepared by and return to:  
William G. Boles  
30342 Falcon Lane  
Big Pine Key, Florida 33043

Filed and Recorded in Official Records of  
**MONROE COUNTY KEVIN MADOK, CPA**

AFFIDAVIT OF FACTS AFFECTING TITLE TO REAL PROPERTY  
MONROE COUNTY, FLORIDA

IN RE: LEGAL HISTORY, RESTRICTIVE COVENANTS AND CURRENT STATUS  
OF THE TROPICAL BAY PROPERTY OWNERS' ASSOCIATION, INC.

Before me, the undersigned authority, personal appeared William G. Boles ("Affiant"), who being first duly sworn, on oath, depose(s) and say(s) that:

1. Affiant is presently a Director of the Tropical Bay Property Owners' Association, Inc. ("TBPOA"), who resides at 30342 Falcon Ln, Big Pine Key, Florida 33043, and states Affiant has been familiar with the tracts of land known as the "Tropical Bay" subdivisions on Big Pine Key in Monroe County, Florida over a period of three years.
2. This affidavit is made for the purpose of stating the history of the Tropical Bay Property Owners' Association, Inc., the history of its governing documents, and the functioning of applicable Florida statutes to effect changes upon the legal status of the TBPOA in order to clarify the authority of the TBPOA over the owners of real property located within the Tropical Bay subdivisions and the obligations which these same owners might have to respond to the demands of the TBPOA.
3. The statements of opinions and beliefs by Affiant should not be regarded or construed as an action to place any cloud of title upon any lands of the Tropical Bay subdivisions.
4. The owners of the real property comprising Tropical Bay, acting as developers, followed the Monroe County process to create three subdivisions with Deeds and Surveys for Tropical Bay recorded as follows:
  - Owners Zeigler & Havelka recorded the plat for Tropical Bay Subdivision on April 8, 1959 in Plat Book 4 at page 106, of the Public Records of Monroe County, Florida. This subdivision is now known as Tropical Bay, 1st Addition.
  - Owners Brehm & Plass recorded the plat for Tropical Bay, 2nd Addition on July 24, 1963 in Plat Book 5 at page 73, of the Public Records of Monroe County, Florida. Block 1 consists of 10 lots and Block 2 consists of 8 lots. Tract C is not subdivided.
  - Owners Brehm & Plass recorded the Plat for Tropical Bay, Third Addition on December 22, 1964 in Plat Book 5 at page 81, of the Public Records of Monroe County, Florida. Block 3 consists of 8 lots, Block 4 consists of 4 lots. Blocks 5 through 9 each consist of 10 lots, Block 10 has 8 lots, Block 11 has 12 lots and Block 12 has 7 lots.

- On April 25, 1967 a plat entitled “Replat of Lot 1 of Tropical Bay” was recorded in Plat Book 5 at page 123, of the Public Records of Monroe County, Florida. This plat replats Lot 1 as “Canal”.
5. Declarations of Restrictions were recorded by the owners for all three plats as follows:
- A Declaration of Restrictions was recorded on April 9, 1959 in Official Records Book 149, page 443, of the Public Records of Monroe County, Florida applicable to Lots 1 to 53, both inclusive, and Lots 32-A to 43-A, both inclusive, of the TROPICAL BAY subdivision.
  - A Declaration of Restrictions was recorded on November 13, 1963 in Official Records Book 294, Page 274, instrument no. 113145, of the Public Records of Monroe County, Florida applicable to the Tropical Bay, Second Addition Blocks 1 and 2. These Restrictions require single family residences only in Blocks 1 and 2.
  - A Declaration of Restrictions was recorded on September 11, 1963 in Official Records Book 307, Page 529, instrument no. 117208 applicable to the Tropical Bay, Second Addition, Tract C. These Restrictions permit single family residences and duplexes in Tract C.
  - A Declaration of Restrictions was recorded on March 14, 1967 in Official Records Book 387, Page 716, of the Public Records of Monroe County, Florida applicable to the Tropical Bay, Third Addition subdivision.
6. At the time the foregoing Declarations of Restrictions were recorded, Tropical Bay Property Owners Association did not exist nor did the Declarations of Restrictions even mention a homeowner’s association or subject property owners to any form of association or membership in a homeowner’s association.
7. The Articles of Incorporation for the Tropical Bay Property Owners Association, Inc., Florida not for profit corporation, were signed May 19, 1971 and filed with the Secretary of State on May 25, 1971.
8. The Articles of Incorporation do not refer to or mention deed restrictions.
9. Article III of the Articles of Incorporation states that anyone owning property in Tropical Bay could become a member of the Corporation by filing a written request (and paying an unspecified fee) which means that membership in the TBPOA was voluntary and TBPOA operated as voluntary membership corporation for an unknown period of time.

10. Chapter 712 of the Florida Statutes, the Marketable Record Title Act (“MRTA”) was enacted in 1963 with the goal of simplifying the transfer of property by extinguishing certain covenants and restrictions after thirty years.
11. Accordingly, Affiant is of the belief that
- The Declaration of Restrictions filed for Tropical Bay, First Addition filed April 9, 1959 were extinguished by MRTA on April 10, 1989. There were no filings or other actions taken to reinstate or continue them.
  - The Declaration of Restrictions for Tropical Bay, Second Addition filed November 13, 1963 would have been extinguished November 14, 1993. However, a Certification of Amendment to Deed Restrictions was filed on August 31, 1993 for Tropical Bay, Second Addition in Official Records Book 1271, Page 766, of the Public Records of Monroe County, Florida which may have acted to reimpose such restrictions. Affiant believes this filing does not meet the requirements of Florida Statute 720.3032, “Notice of association information; preservation from Marketable Record Title Act” to prevent extinction, nor does it meet the Florida Statute 720 code for Covenant Revitalization beginning in Florida Statute 720.403. If the August 31, 1993 Amended Deed Restrictions for Tropical Bay, Second Addition were to be deemed valid to reimpose the restrictions, then they were extinguished by the functioning of MRTA 30 years later on August 31, 2023.
  - The Declaration of Restrictions for Tropical Bay, Third Addition filed March 14, 1967 were extinguished by MRTA on March 15, 1997.
12. Beyond the functioning of MRTA, Affiant believes that the 1991, 1993 and 1997 Revised Deed Restrictions did not and could not mandate membership in a “voluntary” membership corporation. Any such mandatory membership would require the unanimous consent of all of the property owners and not merely 51% of the property owners.
13. The Amended Deed Restrictions which were recorded for all three of the Tropical Bay Subdivisions more than thirty years following the 1st recordation do not constitute a proper action under Florida Statute 720 PART III for revitalization of expired Deed Restrictions. No action whatsoever was taken by the Board of the TBPOA to preserve the original Deed Restrictions from extinguishment.
14. Florida Statute 720.303(2)(e) now requires, ”...At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable

Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with Florida Statute 720.3032.”. No such action was taken.

15. The original Declarations of Restrictions were filed by the developers as covenants running with the land. The Amended Deed Restrictions of 1991, 1993 and 1997 include most of those previous restrictions except those invalidated by Monroe County building code changes. In addition, the three revised declarations claim to bind all of the Lots of each subdivision to mandatory membership in and under the regulation of the Tropical Bay Property Owners Association, Inc. The 1st Addition was claimed to be bound in 1991. The 2nd Addition was claimed to be bound in 1993. The 3rd Addition was claimed to be bound in 1997. It is puzzling to me to consider how the TBPOA could operate with various proportions of its presumed members to be legally bound to membership over the six years between 1991 and 1997. As of 1997, all three additions were claimed to be members of and subject to the regulation of the Tropical Bay Property Owners Association, Inc. I do not believe that a simple majority of owners in each of the three subdivisions was sufficient legal action to mandate membership in a voluntary Florida membership corporation. While I do not believe the amended deed restrictions can do what they claim to do, I include the filings here to complete the document history.

- A Certification of Amendment to Deed Restrictions was filed for Tropical Bay, First Addition record on June 3, 1991 in Official Records Book 1171, Page 1990, of the Public Records of Monroe County, Florida. The Amended Deed Restrictions follow.
- A Certification of Amendment to Deed Restrictions was filed for Tropical Bay, Second Addition on August 31, 1993 in Official Record Book 1271, Page 766, of the Public Records of Monroe County, Florida. It is followed by Amended Deed Restrictions for Tropical Bay, Second Addition.
- A Certification of Amendment to Deed Restrictions was filed for Tropical Bay, Third Addition on June 26, 1997 in Official Record Book 1464, Page 1, of the Public Records of Monroe County, Florida. It is followed by Amended Deed Restrictions for Tropical Bay, Third Addition.

16. Based upon my own independent research of the history of the Tropical Bay Subdivisions and the TBPOA and the application of Florida Statute 712, the “Marketable Record Title Act.”, Florida Statute 720, the “Homeowners’ Association Act.” and Florida Statute 617 the “Florida Not For Profit Corporation Act”, it is my conclusion that

- a. The application of the Marketable Record Title Act has extinguished all covenants, declarations and deed restriction.

- b. The Tropical Bay Property Owners' Association, Inc. has no legal basis to assert any authority or control over the Tropical Bay property owners, including, but not limited to the authority to make assessments, levy fines or lawfully charge fees of any kind whatsoever.
- c. The requirements imposed by Florida Statute 720 upon the TBPOA to preserve covenants from termination have not been performed. Accordingly, the power of the TBPOA to enforce any deed restrictions is now and has for some time been null and void.
- d. The TBPOA is a voluntary membership corporation pursuant to Florida Statute 617 and, accordingly, Tropical Bay property owners who have not requested to be members of TBPOA are not members and that property owners who have asked to be members are free to resign.

Further Affiant sayeth naught.



William G. Boles, a Director of the Tropical Bay Property Owners' Association, Inc.

State of Florida

County of Monroe

The foregoing instrument was sworn to and subscribed before me by means of  physical presence or  online notarization, this 26 day of January, 2024 by William G. Boles, who  is personally known or  has produced a driver's license as identification.

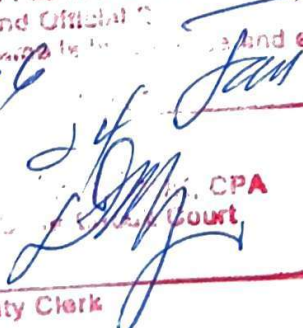
(NOTARIAL SEAL)



  
 Notary Public  
 Printed Name: Christina M. Geide  
 My Commission Expires: 4/19/2027



STATE OF FLORIDA  
 COUNTY OF MONROE  
 This copy is a True Copy of the Original on File in this Office. Witness My hand and Official Seal this 26th day of January, 2024, and effect.

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 CPA  
 Deputy Clerk