

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LAS BRISAS

Last updated: 4/22/2020

This document is an updated “living” version of the official Las Brisas Declaration of Covenants, Restrictions, and Easements (DOCs). Unlike the official document, which includes the original DOCs followed by each amendment, this version has been updated to incorporate all the amendments into the original text. Note that this version includes only text, not signature pages, images, or other extraneous material from the original DOCs and amendments.

This version includes all amendments recorded through March 2020, and will be updated for any future amendments.

DISCLAIMER: This document was produced manually from the original documents and amendments. It is possible that this document differs from the original in unintended ways, and where such differences occur, the original documents and amendments take precedence. In addition, this version of the document includes corrections to typographical errors in the original documents and formatting changes to improve readability.

**DECLARATION OF COVENANTS, RESTRICTIONS AND
EASEMENTS FOR LAS BRISAS**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR LAS BRISAS ("Declaration") is made this 25 day of September, 2000 by WEITZER LAS BRISAS HOMES, LLC, its successors and assigns (hereinafter referred to as the "Declarant"), and joined in by LAS BRISAS HOMEOWNERS ASSOCIATION OF PALM BEACH, INC., a Florida corporation not for profit (hereinafter referred to as the "Association").

RECITALS:

A. Declarant owns certain real property located in Palm Beach County, Florida, which is more particularly described on Exhibit "A" attached hereto ("Property").

B. Declarant is developing the Property as part of a residential community known as LAS BRISAS (hereinafter called the "Project").

C. In order to provide for the orderly development and efficient operation of the Property and to maintain the values thereof, Declarant intends to develop the Property, including, but not limited to those portions of the Property more particularly described on Exhibit "B" attached hereto and made a part hereof (the "Common Properties") pursuant to a general plan, subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and burdens, all running with the Property, as hereinafter set forth in this Declaration.

D. In connection with the foregoing, Declarant deems it desirable to create the Association, a corporation not for profit, under the laws of the State of Florida, to which certain rights, powers, duties and obligations for the Property have been delegated and assigned including, without limitation, operation, administration, maintenance and repair of portions of the Property, including the "Common Properties" (as hereinafter defined), and administering and enforcing the provisions of this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be hereafter owned, used, sold, conveyed, improved, encumbered, hypothecated, leased, demised and occupied, all subject to the covenants, restrictions, easements, reservations, conditions, regulations, burdens, liens, equitable servitudes and all other provisions of this Declaration as hereinafter set forth, which shall run with, benefit and burden all of the Property, and shall be binding on all parties having any right, title or interest in the Property, or any portion thereof, including the parties' heirs, personal representatives, successors and assigns.

ARTICLE 1

DEFINITIONS

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association which have been filed in the office of the Department of State of Florida, a copy of which is attached hereto as Exhibit "C," as such Articles may be amended from time to time.

1.2 "Assessment(s)" shall mean and refer to "Common Assessments," "Individual Assessments," "Special Assessments," and (as each is hereinafter defined), individually and collectively, as the context may require.

1.3 "Association" shall mean and refer to LAS BRISAS HOMEOWNERS ASSOCIATION OF PALM BEACH, INC., a Florida corporation not for profit, its successors and assigns.

1.4 "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association, which have been adopted by the Board, a copy of which is attached hereto as Exhibit "D," as the Bylaws may be amended from time to time.

1.6 "Common Assessment" shall mean and refer to the charge against all Owners and their "Lots" (as hereinafter defined), representing their proportionate share of the routine "Common Expenses" (as hereinafter defined) of the Association.

1.7 "Common Expenses" shall mean and refer to the actual and estimated costs of ownership, maintenance, management, operation, repair and replacement of the Common Properties, together with any other portion of the Property which is now or hereafter becomes the maintenance obligation of the Association, including but not limited to, any maintenance easements or other easements covering portions of Lot(s) in favor of the Association, including reserves for the foregoing to the extent adopted as part of the Association's budget, as provided in the Bylaws, including, without limitation: (a) unpaid Assessments; (b) the costs of any and all commonly-metered utilities, cable or master television charges, if any, and other commonly-metered charges for the Common Properties; (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other agents, employees, or independent contractors; (d) costs of all gardening and other services benefitting the Common Properties, and all recreational facilities thereon; (e) costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance covering or connected with the Association or the Common Properties; (f) costs of bonding the members of the Board and the "Management Company" (as hereinafter defined); (g) taxes paid by the Association, including real property taxes for the Common Properties, if any; (h) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Properties, or portions thereof; (i) amounts required to be paid by the Association to the Town to reimburse the Town for any costs and/or expenses incurred by the Town which arise out of the maintenance of the surface water management system in accordance with Section 5.4(A) hereof; (j) costs and expenses incurred by the Association in connection with maintenance, repair and other obligations set forth in any Development Order, Ordinance or Permit affecting the Property which shall include, but not be limited to, the obligations set forth in Section 5.2(K) hereof; and (k) costs of

any other items or expenses incurred by the Association for any reason whatsoever in connection with the Common Properties, the Association's rights or duties hereunder, and/or for the benefit of the Owners or the Property.

1.8 "Common Properties" or "Common Areas" shall mean and refer to those portions of the Property (or any interest therein) which are declared as being Common Properties in this Declaration or in any "Supplemental Declaration" (as hereinafter defined), or those portions of the Property (or any interest therein) which are conveyed by Declarant or otherwise to the Association as Common Properties, including where the context requires or permits, any "Improvements" (as hereinafter defined) thereon or any personal property owned by the Association and used or useful in connection with the operation of the Common Properties. Common Properties are for the common use and enjoyment of the Owners, subject to the rights hereunder of Declarant and others any portion of the Common Properties that are located within a Lot (which Lot is presently existing or created after the creation of the Common Properties affecting the Lot) shall only be an interest in easement (non-exclusive) and not fee simple and the Owner of that Lot shall own the fee simple title to said portion of the Lot subject to a Common Properties Easement(s) (this sentence specifically includes roads, sidewalks, access ways, or parking areas). Declarant hereby declares the real property described in Exhibit "B" hereto to be the initial Common Properties.

1.9 "County" shall mean and refer to Palm Beach County, Florida.

1.10 "Declarant" shall mean and refer to WEITZER LAS BRISAS HOMES, LLC, presently having an office located in 7296 So. Federal Highway, Hypoluxo, Florida 33462, County, Florida, and any assignee of Declarant's rights hereunder in accordance with Section 18.12 hereof, but only to the extent that such assignment is evidenced by an express written assignment of Declarant's rights recorded in the Public Records of the County.

1.11 "Declaration" shall mean this instrument, as it may be amended from time to time.

1.12 "Dwelling Unit" or "Unit" shall mean and refer to a constructed dwelling which is designed and intended for use and occupancy as a family residence.

1.13 "Family" shall mean and refer to (i) a group of natural persons related to each other by blood, or legally related to each other by marriage or adoption, or (ii) a group of persons not so related who maintain a common household on a Lot.

1.14 This section intentionally left blank.

1.15 "Improvement" shall mean and refer to all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Property, including, but not limited to, buildings, structures, fixtures, walkways, sprinkler pipes and other apparatus, roads, driveways, parking areas, fences, screening walls, retaining walls, docks, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, antennas or satellite dishes, signs, and exterior air-conditioning and water-softener fixtures or equipment, if any.

1.16 "Individual Assessment" shall mean and refer to a charge against one or more Owners and their Lots, directly attributable to such Owner(s)' failure to duly perform or breach their obligations or burdens hereunder, and the Association's enforcement of this Declaration against such Owner(s) and/or Lot(s), as further described in this Declaration.

1.17 "Institutional Mortgage" shall mean and refer to any bona fide first mortgage including but not limited to any subsequent modifications or future advance agreements of said mortgage encumbering the Property or a Lot which was made in favor of Declarant, a bank, mortgage company, insurance company, federal or state savings and loan association, real estate or mortgage investment trust, Bank of America, N.A., or other lender who makes residential mortgage loans in the ordinary course of its business and is generally recognized in the community as an institutional lender.

1.18 "Institutional Mortgagee" shall mean and refer to the holder of any Institutional Mortgage.

1.19 "Lot" shall mean and refer to any residential Lot as shown on a plat, as presently or hereafter recorded or modified, or as shown on any plat waiver or record survey filed with the County, or any parcel of land located within the Property which has been or is intended to be conveyed to an Owner and which contains or is intended to contain one dwelling unit, together with any Improvements which may be constructed thereon.

1.20 "Management Company" shall mean and refer to the person, firm, or other entity employed by the Association as its agent to assist it in fulfilling or carrying out certain duties, powers, obligations or functions of the Association.

1.21 "Members" shall mean and refer to any Persons who are entitled to membership in the Association, as provided in Article 3 hereof.

1.22 "Notice and Hearing" shall mean and refer to written notice and a public hearing, before a tribunal appointed by the Board, at which the Owner charged with a particular offense shall have an opportunity to be heard in person or by counsel at such Owner's expense and as otherwise provided in the Bylaws.

1.23 "Owner" shall mean and refer to a record owner of any percentage of the fee simple interest in a Lot, including Declarant, but excluding those Persons having an interest in a Lot merely as security for the performance of an obligation. For purposes of Article 10 of this Declaration only, unless the context otherwise requires, the term Owner shall also include the Family, invitees, licensees, lessees and sublessees of any Owner, and any other user or occupant of a Lot. If a Lot is owned by more than one Person, the term Owner shall mean each such Person, jointly and severally.

1.24 "Person" shall mean and refer to any of an individual, corporation, governmental agency, trust, estate, partnership, association, two or more persons having a joint or common interest, or any other legal entity with the legal right to hold title to real property.

1.25 "Plat" shall mean and refer to the Site Plan of Las Brisas, as recorded in Official Records Book 11561, Page 812 of the Public Records of Palm Beach County, Florida. Each Owner, by acceptance of a deed to a Lot, shall be deemed to be bound by and shall comply with each and every Plat restriction applicable to the Lot. The Association shall be empowered (but not obligated) to enforce any Plat restrictions as if the restrictions were part of this Declaration.

1.26 "Property" shall mean and refer to all of that certain real property located in the Town of Hypoluxo, in Palm Beach County, Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof, and as may be amended from time to time pursuant to this Declaration.

1.27 "Residential Property" shall mean and refer to all real property within the Property which is not Common Properties, and which is not otherwise dedicated, restricted or limited for non- residential use.

1.28 "Rules" shall mean and refer to the rules and regulations which are duly adopted by the Association from time to time.

1.29 "Special Assessment" shall mean and refer to a charge against all Owners and their Lots, representing their proportionate share of the cost incurred by the Association for: (i) reconstruction on the Common Properties pursuant to the provisions of this Declaration; (ii) installation or construction of any capital improvements on any portion of the Common Properties which the Association may from time to time authorize; or (iii) any other extraordinary expense of the Association, including, but not limited to, amounts necessary to pay shortages in Common Expenses of the Association after collections of Common Assessments, as all are further described in Section 6.7 hereof.

1.30 "Supplemental Declaration" shall mean and refer to any declaration of covenants, restrictions and easements which may be recorded by Declarant for the purpose of supplementing or amending this Declaration.

1.31 "Town" shall mean and refer to the Town of Hypoluxo, Florida, including all of its agencies, divisions, departments, attorneys, or agents employed to act on its behalf.

The foregoing definitions shall be applicable to this Declaration, as amended from time to time, and also to any Supplemental Declaration, unless specifically stated to the contrary herein or therein.

ARTICLE 2

OWNERS PROPERTY RIGHTS; EASEMENTS

2.1 Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive, common right and easement of ingress and egress and of enjoyment in, to and over, and use of, the Common Properties, which shall be appurtenant to and shall pass with title to every Lot, subject to the following conditions, provided, however, that none of the following shall deny the rights of ingress and egress granted in this Declaration, and to the extent they attempt to deny any rights of ingress and egress they shall not be of any force or effect:

- A. The right of the Association to reasonably limit the number of guests or invitees of Owners using the Common Properties at any one time.
- B. The right of the Association to establish and modify Rules pertaining to the use of the Common Properties, including, but not limited to, the right and obligation of the Association to enforce all parking and other restrictions within the Common Properties.
- C. The right of the Association, in accordance with the Articles, Bylaws and this Declaration, with the vote or written assent of Members entitled to cast sixty-seven (67%) percent of the votes of Members in the Association, to borrow money for the purpose of improving the Common Properties, in aid thereof, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinate to the use rights of the Owners.
- D. The right of the Association to suspend the right of an Owner to use the Common Properties (except for purposes of ingress and egress) for any Owner, except Declarant, and for:
 - (i) any period during which any Assessment against an Owner's Lot remains unpaid and delinquent; and
 - (ii) a period not to exceed thirty (30) days for any other single infraction of this Declaration or the Rules of the Association, provided that any suspension of such rights to use the Common Properties based upon infractions other than non-payment of Assessments shall be made only by the Board after Notice and Hearing as provided in the Bylaws.
- E. The right of the Association or Declarant to dedicate, grant, release, convey, alienate or transfer all or any part of the Common Properties to any public agency, authority, utility or party or entity.
- F. The right of Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Common Properties and the facilities thereof, without charge, including ingress and egress, as necessary, for purposes of sales, marketing, advertising, display, signs, access, construction, development and any other activities or purposes.
- G. The right of the Association or Declarant to construct, replace or refinish any Improvement or portion thereof upon the Common Properties, in accordance with the provisions of this Declaration.
- H. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Properties.

I. The right of the Association or Declarant to grant such other easements over the Common Properties as Declarant deems appropriate, which easements shall be joined in or similarly granted by the Association as requested by Declarant or sought by the Association.

J. Any restrictions and/or conditions contained within the following documents affecting the Property from time to time: (i) Town Ordinances, (ii) Department of Environmental Protection or Army Corps of Engineer Permits, and (iii) any conservation easement which is currently recorded or which may be required to be recorded in the Public Records of the County pursuant to the foregoing instruments, or the requirements of any governmental or quasi-governmental agency or entity.

Anything to the contrary herein notwithstanding, no action authorized in the lettered paragraphs above shall be taken which in any fashion impairs or limits Declarant's rights hereunder without the prior written consent of Declarant, as long as Declarant owns any portion of the Residential Property.

2.2 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Properties and facilities to the members of the Owner's Family, in accordance with the Bylaws. Any Owner may so delegate such rights to the Owner's tenant(s) who reside on the respective Lot, subject to the Rules and other reasonable regulations imposed by the Board.

2.3 Waiver of Use. No Owner may be exempt from personal liability for Assessments duly levied by the Association, or cause a release of the Lot owned by the Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Properties or by abandonment of the Owner's Lot.

2.4 Title to the Common Properties. After all Improvements anticipated to be constructed in the Residential Property have been constructed and conveyed to purchasers, or sooner at the option of Declarant, Declarant shall convey to the Association by quit-claim deed the fee simple title to the Common Properties and the Association shall be bound to accept said conveyance without the joinder to such deed. Declarant, and thereafter the Association, shall hold title to the Common Properties for the benefit of those Persons entitled to use same under the provisions hereof. Declarant may mortgage the Common Properties to finance the original development and construction thereof, provided that the Common Properties shall be free and clear of all mortgages at the time of conveyance to the Association, and the Association shall not be personally liable for payment of the debt secured by such mortgage(s).

2.5 Access. Declarant reserves unto itself, including its designees from time to time, and hereby grants to the Association and all Owners, including their respective tenants, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across: (i) any streets, sidewalks, access ways, and parking areas constructed on the Property or Common Properties from time to time; and (ii) over and across those portions of the Common Properties lying adjacent to and between the boundary line(s) of the Lot(s) and the streets, sidewalks, access ways and/or parking areas, as the case may be, which portions of the Common Properties are either designated as or necessary for ingress and egress up to the Lot(s), it being the specific intent of the Declarant to hereby grant perpetual, uninterrupted and contiguous access for ingress and egress to and from Lot(s) to and from dedicated rights of way. Any rights granted or reserved under this Section however, shall be subject to any rights granted or permitted to be granted by the Declarant and/or the Association to third parties as provided elsewhere in this Declaration.

2.6 Utilities. The Property shall be subject to such non-exclusive easements as may be determined by the Declarant and/or the Town for utilities, including, but not limited to, drainage, water, sewer, telephone, electric and cable television, as may be reasonably required to properly and adequately serve the Property or other portions of the Project as it exists from time to time, provided, however, that no such easements shall exist so as to unreasonably interfere with the use of the Property subject to same or so as to cause any encroachments of such easements upon any buildings or other Improvements, wherever said buildings or other Improvements may be located from time to time. Declarant reserves the right to locate sanitary sewer manifolds, water, sewer, electric, and other utility lines and utility meters serving any buildings or other facilities in one common location on one or more Lots, and in that event an easement shall exist for the utilities, sanitary sewer manifolds and common meters so constructed, and any wires, pipes, or other facilities connecting such meters to the Lots, and for the maintenance and repair of the foregoing and for the reading of such meters. Each of said easements, whether now in existence or hereafter created, shall constitute covenants running with the Property and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use thereof. No structure, planting or other material or improvement may be placed or permitted to remain within any utility easement that will interfere with or prevent the maintenance of utilities, except at the sole risk of the applicable Owner.

2.7 Declarant. Declarant hereby reserves such non-exclusive easements as are necessary (in Declarant's reasonable discretion) over, under, across and through the Property in order to exercise its rights hereunder and otherwise construct, develop and market the Property. Without limited the generality of the foregoing, Declarant hereby specifically reserves the right to install or place within the Property and/or the Common Properties any and all marketing, advertising, decorative features, or any other items in Declarant's sole and absolute discretion, including but not limited to, fountain(s), dock(s), seawall(s) or retaining wall(s) within any waterway, water body or Common Property if Declarant elects to install same in Declarant's sole and absolute discretion. Unless Declarant conveys such item(s) to the Association, such item(s) shall remain the sole property of the Declarant and Declarant shall have the right, but not the obligation to remove all or any one of such item(s) at any time. The Property shall be subject to any and all such easements deemed necessary by Declarant, provided, however, that no such easements shall exist so as to unreasonably interfere with the use of the Property subject to same or so as to cause any encroachments of such easements upon any buildings or other Improvements wherever said buildings or other Improvements may be located from time to time. Any easement rights created by this Declaration, generally or specifically, in favor of Declarant may be assigned by Declarant, partially or otherwise, without the consent or joinder of the Association or the Owners. Furthermore, Declarant reserves the exclusive right, but not the obligation, to install from time to time, improvements within the Common Properties consisting of walls, buffers, fences, gates, guard houses, gate houses, docks, seawalls, retaining walls or similar Improvements, in Declarant's sole and absolute discretion. In addition, Declarant and the Association are granted a perpetual and irrevocable easements over, under and across the Property for the purposes herein expressed, including, without limitation, for inspections to ascertain compliance with the provisions of this Declaration, and for the performance of any maintenance, alteration or repair which it is entitle to perform. Without limiting the generality of the foregoing, Declarant specifically reserves easements for all purposes necessary to comply with any governmental requirement or to satisfy any condition that is a prerequisite for a governmental approval. By way of example, and not of limitation, Declarant may construct, maintain, repair, alter, replace and/or remove improvements; install landscaping; install utilities; and/or remove structures on any portion of the Property if Declarant is required to do so in order to obtain the release of any bond posted with any governmental agency.

2.8 Services. Declarant hereby grants to courier or delivery services, pick-up and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by Declarant to service the Property, and to such other persons as Declarant from time to time may designate, the non-exclusive, perpetual right of ingress and egress over and across the Common Properties for the purposes of performing their authorized services and investigation.

2.9 Lot Line Encroachments. Certain dwellings and other Improvements constructed on Lots may be situated so that a portion thereof, including, without limitation, any exterior wall of such dwelling, roof overhangs, gutters or fences, may be located upon, immediately adjacent to, overhang, or encroach upon the boundary line (as well as that portion of the adjoining Lot or Common Properties subject to such encroachment) between the Lot upon which said dwelling is located and either an adjoining Lot or a portion of the Common Properties. In all such cases, said adjoining Lot or portion of the Common Properties shall be subject to an easement and appurtenant rights, including the right of ingress and egress, in favor of the encroaching Lot and its respective Owner, which easement and appurtenant rights shall be for the purpose of (a) permitting the existence of the encroachment, and (b) allowing ingress and egress for the performance of proper and normal maintenance to the encroaching Improvement, including meter reading. All of such Improvements which have been constructed by Declarant and approved by applicable building authorities are deemed to have been reasonably constructed, notwithstanding any such encroachment. In no instance shall the exercise of any such easement and appurtenant rights created pursuant to this Section unreasonably interfere with the use of the Lot subject to same.

2.10 Party Walls. Each common wall shared by two Lots shall be a party wall for the perpetual benefit of and use by the Owners of each respective Lot. Each such Lot and Owner is hereby granted an easement for the existence of the party wall to the extent it encroaches on the adjoining Lot, whether encroachment exists as a result of initial construction, reconstruction or natural settling or shifting. Except as otherwise provided herein, each Owner shall bear the responsibility to repair and maintain the unfinished surface of the exterior portion of the party wall which is located within his residence. Both Owners shall equally share the cost of repair and maintenance of the structural and interior portions of the party wall. However, if either Owner's negligence or willful misconduct causes damage to the party wall, such Owner shall bear the entire cost of repair. Each Owner shall have the right to enter the adjacent Lot, including the residence located thereon, where necessary in connection with the repair or maintenance of a party wall, upon reasonable prior notice to the affected Owner(s) and an easement for same is hereby created. Any repair or reconstruction shall utilize substantially similar materials, design and location as originally existed. No openings may be cut in the party wall or structural changes made thereto, unless agreed upon by Owners sharing the party wall.

2.11 Association. Non-exclusive easements are hereby granted in favor of the Association throughout the Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as none shall unreasonably interfere with the use of any Lot. Furthermore, an easement is hereby granted in favor of the Association, including its agents and designees, for purposes of carrying out all obligations and/or rights of the Association pursuant to the Declaration, including but not limited to, the functions of the Association contained in Article 5 hereof. In furtherance of the Association's easement privileges, no Owner shall lock any fence which may be located in the rear or front of any Lot. Furthermore, a non-exclusive easement is hereby created over all utility easements and drainage easements located on any Lot, whether now existing or

hereafter created, including but not limited to all utility easements and drainage easements contained on the Plat, which easement is in favor of the Association, including its agents and designees, in perpetuity, to utilize for all proper purposes of the Association. The Association shall have the right to assign, in whole or in part, without the consent or joinder of any Owner, Mortgagee or third party, any easement rights created under this Section to any public agency, authority, utility or party or entity.

2.12 Easement to Maintain Walls, Hedges and Fences. Certain Lots may contain community perimeter walls, hedges and/or fences along the rear and/or side boundary lines. There is reserved in favor of the Association and Declarant, a perpetual, non-exclusive easement over and across each Lot necessary for installation, maintenance, replacement and repair of all community walls, hedges and fences. In furtherance of the Association's easement privileges, no Owner shall lock any fence which may be located in the rear or front of any Lot. If there is any doubt about whether a particular wall, hedge or fence is the maintenance obligation of the Association, the Association's determination of such matter shall be final and binding on all Owners.

2.13 Signage Easements. Declarant hereby reserves unto itself and the Association such non-exclusive easements as are necessary (in Declarant's and/or Association's sole and absolute discretion), over, under, upon, and through the Property (including ingress, egress and access thereto) in order for the Declarant and/or the Association to install, repair, replace and/or maintain any and all signage, including but not limited to, signage for manatees and speed zone limits which may be required to be installed and maintained on the Property from time to time by any governmental and/or quasi-governmental agency or entity.

2.14 Boat Docks/Boat Slip Easements. Those Common Properties which consist of waterways and/or water bodies are subject to an easement and appurtenant rights, including the right of ingress and egress in favor of any owner, the Association, the Town and any governmental agency having jurisdiction for the purpose of allowing ingress, egress and access to and for the performance of proper and normal maintenance to any boat dock, boat slip, seawall, and/or retaining wall located upon said Common Property from time to time.

2.15 Execution. If and to the extent that the creation of any future easements (exclusive or non-exclusive), deemed necessary by Declarant for any purpose it deems appropriate in its sole discretion, including but not limited to, access, ingress and egress, emergency access, utilities, drainage, water and sewer, gas, cable television and related uses, electric and telephone, requires the joinder of any Owner(s), then Declarant may, by its duly authorized officers, as the agent or the attorney-in-fact for the Owners, execute, acknowledge and deliver such instruments required to create such easements, so long as said easements do not encroach upon any buildings. The easements may be created upon any portion of the Property including but not limited to Lots and Common Properties and shall be valid and effective whether created before or after Declarant has conveyed title to any portion of the Property so affected and said easements shall not require the joinder of any Owners, Mortgagees, the Association or any other party holding an interest in the Property affected. The Owners, by the acceptance of deeds to their Lots, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal agent or attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such instrument executed pursuant to this Article shall recite that it is made pursuant to Article 2 of this Declaration.

2.16 Survival. Any and all easements, licenses, or other rights granted or reserved pursuant to this Article 2 shall survive any termination of this Declaration.

ARTICLE 3

MEMBERSHIP IN ASSOCIATION

3.1 Membership. Every Owner of a Lot, including Declarant, shall be a Member of the Association (hereinafter referred to as the "Membership"). Membership in the Association, except for Membership of Declarant, shall be appurtenant to and may not be separated from the Lot. Except as to Declarant, ownership of a Lot shall be the sole qualification for Membership in the Association.

3.2 Co-Ownership of Lots. When more than one Person owns an interest in any Lot (a "Co-Owner"), all such Co-Owners shall be Members, but only one such Co-Owner shall be entitled to exercise the vote to which the Lot is entitled. All Co-Owners of each Lot shall designate in writing to the Secretary of the Association one of their number to so vote the interests of their Lot. Fractional votes shall not be allowed. The vote for each Lot shall be exercised as a single vote or not at all. Where no voting Co-Owner is designated, the Lot shall not be entitled to vote until one individual is designated by all Co-Owners to vote the interests of the Lot. The nonvoting Co- Owner(s) shall be jointly and severally responsible for all of the obligations imposed upon the Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein, or in the Bylaws, shall be binding on all Co-Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration, any Supplemental Declaration, and in the Articles and Bylaws (to the extent applicable). If a Lot is owned by a corporation or other entity, the individual entitled to vote for the Lot shall be designated by a certificate signed by an appropriate officer or agent of the entity and filed with the Secretary of the Association.

ARTICLE 4

VOTING RIGHTS

4.1 Classes of Voting Membership. The Association shall have two (2) classes of Members, each with voting rights as follows:

Class A. Class A Members shall be all Owners, including Declarant. Class A Members shall be entitled to one (1) vote, in accordance with the Bylaws, for each Lot they own.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote which the sum of all Class A Members are entitled to cast at any time, thus giving the Class B Member approximately a 2/3 majority of votes in the Association. The Class B Membership shall cease upon the first to occur of the following:

- (1) the date which is ten (10) years from the date upon which this Declaration is recorded in the Public Records of the County; or
- (2) no later than three months after ninety percent (90%) of the Lots in all phases of the Project that will ultimately be operated by the Association have been conveyed to Members other than the Declarant; or
- (3) termination of the Class B Membership by resignation of all Declarant- appointed directors and delivery to the Secretary of the Association of a certificate in recordable form, signed by Declarant and stating that Declarant elects to terminate the Class B Membership.

4.2 Termination of Class B Membership. Upon termination of the Class B Membership, Declarant shall retain any voting rights it may have as a Class A Member.

ARTICLE 5

FUNCTIONS OF THE ASSOCIATION

5.1 Through Board Action. The affairs and decisions of the Association shall be conducted and made by the Board; the Members shall only have such power or rights of approval or consent as is expressly specified herein, or in the Articles or Bylaws. In the absence of a specific requirement of approval by Members, the Board may act on its own through its proper officers.

5.2 Required Services. In addition to those other responsibilities specified in the Articles or Bylaws, the Association, or its Management Company if applicable, shall be required to provide the following services as and when deemed necessary and appropriate by the Board and shall have easement rights necessary to perform same:

- A. All painting and maintenance of the Common Properties, and all Improvements thereon, as and when deemed necessary by the Board.
- B. Maintenance and care for all landscaped areas within the Common Properties and Lots, including but not limited to, as applicable, the front yards, side yards, rear yards, court yards (if any) and garden areas (if any), of each Lot, including but not limited to, lawns, trees, shrubs, hedges, bushes, and plantings, if any, and including irrigation of all portions of each Lot, and maintenance of irrigation equipment and facilities within each Lot. The Board shall be entitled to determine, in its sole discretion and without notice to any Owner, the time of day or night that various portions of the Common Properties and the Lots will be irrigated.
- C. Maintenance of any and all streets, roads, waterways and water bodies, parking areas, sidewalks, lead walks, paths and entry features, entry gates, guard houses, gate houses, signage monuments and all similar improvements, recreational facilities, docks, boat slips, seawalls, retaining wall and/or other similar or related improvements (which are part of the Common Properties and are not reserved for and/or assigned to the exclusive use of an Owner), road and Lot drainage, including curbs, gutters, sanitary sewer manifolds, storm sewers and swales, located throughout the Common Properties and or within any portions of the Property which have not been dedicated to the public or any governmental or quasi-governmental body or assigned or transferred by the Declarant and/or the Association to any public agency, authority, utility or private entity.
- D. Payment of ad valorem and commercial personal property taxes, if applicable, with respect to the Common Properties, both prior to and after conveyance of same by Declarant to the Association. This provision for payment of taxes prior to conveyance of legal title is fair in light of the Members' use and benefit of such property by virtue of easements created herein.
- E. Operation of the Common Properties in accordance with the Rules and other standards adopted by the Board from time to time, both prior to and after conveyance of same by Declarant to the Association.
- F. Taking any and all actions necessary to enforce all covenants, restrictions and easements affecting the Property and performing any of the functions or services delegated to the

Association in any covenants, conditions or restrictions applicable to the Property, or in the Articles or Bylaws.

G. Conducting business of the Association, including arranging for ancillary administrative services such as legal, accounting and financial, and communication services such as informing Owners of activities, notice of meetings, and other important events.

H. Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board, which shall include but not limited to insuring all Common Properties and all recreational facilities, docks, boat slips, seawalls, retaining walls and/or any similar or related improvements which are part of the Common Properties and shall also include, but shall not be limited to any blanket insurance policies covering the building structures located on the Lots, which blanket insurance policies shall be in the name of the Association, individually and as agent for the Owners covered by the policies, without naming them and as agents for their mortgagees without naming them.

I. Acceptance of any instrument of conveyance with respect to any Common Properties delivered to the Association.

J. Painting and non-structural, cosmetic maintenance of the exterior surfaces of walls, privacy walls, fences and trim of any Improvement on any Lot; and painting only of any front doors, side doors, rear doors and/or framing or casings thereof, located on each house on any Lot; and painting and structural maintenance, repair or replacement, of roofs, including gutters, downspouts and skylights, as the Board and/or the Association deems proper, in their sole discretion, provided, however, that such painting and structural maintenance, repair or replacement shall be for ordinary wear and tear from time to time and not for damages caused by fire, hazards or any other perils or any other casualty loss. Except as provided in Sections 5.2.B and 5.2.0 hereof and except as provided in this Section 5.2.J above, the Association shall not be responsible for maintenance, repair or replacement of each house and related structures within or on any Lot, including, but not limited to, party or common walls, any stucco repairs, any structural repairs (other than roofs, including gutters, downspouts and skylights as provided in this Section 5.2.J), any windows, window screens, door screens, patio screens, screened enclosures, tiles, including but not limited to concrete pavers or exterior patio tiles, if any, front doors, side doors, rear doors, and/or the framing or casings of any of the foregoing, any air-conditioning or water softening fixtures or equipment, or any equipment, facilities or other items whatsoever installed within or placed upon any Lot by any Owner, including its agents, or other designees, and/or any other maintenance obligations designated as the Owners' responsibilities from time to time in the Declaration or the Rules.

K. Assuming, accepting and performing of all obligations, responsibilities and requirements required to be completed or performed pursuant to any Town Ordinance, Development Conservation Easement or any Department of Environmental Protection, Department of Natural Resource Protection or Army Corps of Engineers Permits affecting the Property from time to time.

L. In the event Declarant elects, in its sole and absolute discretion, to locate, construct, create and/or install mitigation upon the Property, the Association shall monitor and maintain the Mitigation Area pursuant to and specifically in accordance with the requirements and restrictions

contained in the applicable governmental and/or quasi-governmental permits, and any applicable governmental or quasi-governmental authorities from time to time.

M. In the event Declarant or the Association elect to locate, construct, create and/or install any boat docks, boat slips, seawalls, or retaining walls or similar improvements upon the Common Properties, the Association shall be required to repair, replace and maintain said improvements pursuant to and specifically in accordance with the requirements and restrictions contained in the applicable governmental and/or quasi-governmental permits, and any applicable governmental or quasi-governmental agencies or authorities from time to time.

5.3 Authorized Services. The Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform same:

- A. Lighting of roads, sidewalks, walks and paths throughout the Property;
- B. Fire protection and prevention;
- C. Garbage and trash collection and disposal;
- D. Conducting recreation, sport, craft and cultural programs of interest to Owners, including their families, tenants, guests and invitees;
- E. Protection and security, including, but not limited to, the employment of stationary or patrolling security guards within the Property and operation of a guardhouse;
- F. Maintenance of electronic and other surveillance devices;
- G. Installation, operation and maintenance of cable television facilities, bulk cable television services, or other communication systems throughout the Property;
- H. Such other services as are authorized in the Articles or Bylaws;
- I. Cleanup, landscaping, maintenance, dredging, water treatment or other care of canals, water ways, waterbodies, roads or other property (public or) adjacent to the Property, including beaches, to the extent such care would, in the reasonable determination of the Board, be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the owner thereof or other person authorized to grant such right, including, but not limited to, any appropriate governmental authority;
- J. Leasing and maintaining any boat dock or boat slip which may be hereinafter constructed upon or adjacent to the Common Properties as provided elsewhere in this Declaration.
- K. Emergency repairs and other work on Lots reasonably necessary for the proper maintenance and operation of the Project, including, but not limited to party wall repairs and repairs to any and all common systems on or affecting the Property.

5.4 Surface Water Management and Drainage. The surface water management and drainage system for the Property is part of one integrated system throughout the Project. An easement is hereby created over the Common Properties and over all drainage easements throughout the Property whether

now or hereafter existing, in favor of the Association and the Town, including their agents or other designees, for surface water drainage and for the installation and maintenance of the surface water management and drainage system for the Property; provided, however, that such easement shall be subject to Improvements constructed within the Property as permitted by controlling governmental authority from time to time. The surface water management and drainage system shall be developed, operated and maintained in conformance with the requirements of the South Florida Water Management District and/or any other controlling governmental authorities. Any proposed amendment to this Declaration, which would affect the surface water management and drainage system, environmental conservation areas, if any, or water management portions of the Common Properties must be submitted to the South Florida Water Management District to determine whether the proposed amendment necessitates a modification to the Surface Water Management Permit (the "Permit"). After a review of the proposed amendment, the South Florida Water Management District will advise the Association if a modification of the Permit is necessary.

A. The Declarant shall construct, or shall cause to have constructed the surface water management system in accordance with any permits issued by the South Florida Water Management District and/or any other governmental and/or quasi-governmental agency or entity having jurisdiction over the Property. The Town shall maintain the entire surface water management and drainage system within the Property, including any portion thereof owned, but not maintained by the South Florida Water Management District, and including but not limited to all lakes, canals, swale areas, retention areas, culverts, pipes, and related appurtenances required to be maintained by the South Florida Water Management District and/or any other controlling government and/or quasi-government authority or entity pursuant to any permit issued for the Property. Declarant reserves unto itself, including its designees and assignees from time to time, and hereby grants to the Association, the right, in its sole and absolute discretion and without the consent or joinder of any Owners, mortgagees or other third party, to enter into an agreement with the Town relating to the maintenance of the surface water management and drainage system, which agreement shall provide that the cost of maintenance under the agreement shall be the direct responsibility of the Association and paid through its assessment powers. Notwithstanding the foregoing, the Association shall reimburse to the Town, all costs and expenses incurred by the Town (including, but not limited to, any related administrative expenses, late charges and interest which may arise) in performing its maintenance obligations to the surface water management and drainage system in accordance with the South Florida Water Management District requirements and/or the requirements of any governmental or quasi-governmental agency or entity. The Town shall bill the Association at least annually and no more often than quarterly and the Association shall pay to the Town upon such billing, the Town's costs and expenses for such maintenance. The bill rendered by the Town shall constitute a "Maintenance Invoice" as that term is defined in Exhibit "F" hereto. If the Association shall fail to pay the Maintenance Invoice in accordance with Exhibit "F" then the Town shall have all the rights and remedies available to it under Exhibit "F", including, without limitation, the right to collect a late charge and interest at the rate of twelve percent (12%) per annum, and the right to record a claim of lien against each Lot owned by a Member other than Declarant to secure repayment of the Lot Owner's reimbursement obligation, in accordance with Exhibit "F" hereto.

5.5 Irrigation System. A non-exclusive easement is hereby created over the applicable and necessary portions of the Common Properties and the Lots in favor of the Association, including its agents or other designees, for the installation and maintenance of the irrigation system for the Property; provided, however, that such easement shall be subject to Improvements constructed within the Property as permitted by controlling governmental authority from time to time, and provided that

such easement shall not unreasonably interfere with the Declarant's or any Owner's (including their respective agents or other designees) intended or permitted use of the Common Properties and/or the Lots.

5.6 Actions by Association. Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim or extra-judicial action except for (i) imposition, enforcement and collection of Assessments, including lien rights, pursuant to Article 7 hereof, (ii) collecting of debts owed to the Association, (iii) bringing any contest or appeal of tax assessments relating to any property owned by the Association, (iv) actions brought by the Association to enforce the provisions of this Declaration, and (v) counterclaims brought by the Association in proceedings instituted against it, unless such legal action, claim or extra-judicial action shall be specifically approved for such purposes by 75% of the total votes of all Members of the Association in existence at any time. If the Association's actions have been approved by the Members in accordance with this Section 5.6, all expenses incurred shall be deemed Common Expenses. In any action brought by or against the Association, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. This Section 5.6 may not be amended.

ARTICLE 6

COVENANT FOR ASSESSMENTS

6.1 Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association (1) annual Common Assessments for Common Expenses, (2) Individual Assessments, (3) Special Assessments, (4) Fines, hereinafter collectively described as the "Assessments." All Assessments are to be imposed and collected as hereinafter provided. The obligation of each Lot and Owners thereof for its respective Assessments shall commence the day on which title to the Lot is conveyed by Declarant to the first purchaser thereof and shall be prorated from such date.

All Assessments, together with interest, costs, late charges and reasonable attorneys' fees for the collection thereof, shall be a charge on each Lot (except for Declarant-owned Lots) and shall be a continuing lien thereon as more particularly described in Article 7 hereof. Each Assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting Institutional Mortgagees, the personal obligation for delinquent Assessments shall be the joint and several obligation of such Owner and the successors-in-title to such Owner.

6.2 Common Assessments. The Common Assessments levied by the Association shall be used exclusively to pay Common Expenses. Disbursements shall be made by the Board of Directors for such purposes as are deemed necessary for the discharge of its responsibilities herein for the common benefit of the Owners and to reimburse Declarant for any start-up expenses advanced by Declarant.

6.3 Amount of Common Assessments; When Payable. At least twenty (20) days prior to the beginning of each fiscal year the Board of Directors shall prepare, adopt and distribute to all Members a written, itemized, estimated budget of the Common Expenses to be incurred by the Association during the coming year in performing its functions under this Declaration. The annual Common Assessment for each Lot shall equal the amount of the estimated operating budget, as adopted pursuant to the Bylaws (less any surplus or plus any deficit from prior years), divided equally by all Lots. From time to time during the fiscal year, the Board may modify the budget for the fiscal year and, upon written notice to Members, change the amount, frequency, or due dates of Common Assessments. Subject to the right of the Association to accelerate Assessments for delinquencies as provided herein, and subject to the right of the Board to modify the amount, frequency or due date as provided above, annual Common Assessments shall be payable on the first day of each month for which a Common Assessment is due and shall be payable in equal monthly installments unless determined by the Board, from time to time, to be payable less frequently. In the event any Assessments for Common Expenses are made payable in equal periodic payments, as provided in the notice from the Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until (i) the notice specifically provides that the periodic payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or (ii) the Association notifies the Owner in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any Assessments for Common Expenses be due less than ten days from the date of the notification of such Assessments. The budget and Assessment procedure shall be further subject to the provisions of the Bylaws.

6.4 Declarant Funding of Deficit. Until such time as Declarant no longer owns any portion of the Residential Property, or until Declarant notifies the Association in writing that Declarant elects to pay Common Assessments for Common Expenses, as in the case of any other Owner, Declarant shall not be liable for Common Assessments for Common Expenses for any Lots owned by Declarant, but in lieu thereof, Declarant shall be responsible for all Common Expenses in excess of the (i) Common Assessments for Common Expenses receivable from the other Owners, and (ii) the Contribution (as hereinafter defined) receivable from the other Owners. During such period when Declarant is not liable for Common Assessments for Common Expenses for Lots owned by Declarant, the Common Assessments for Common Expenses shall be established by Declarant based upon Declarant's good faith estimate of what the expenses of the Association would be if all Lots within the Property were improved, so that Common Assessments for Common Expenses during such period will be approximately what said Common Assessments would be if the development of the Property, as contemplated by Declarant, was complete. Such obligation of Declarant shall be deemed a Common Assessment and if Declarant fails to pay same, then the Association shall have all of the remedies for collection provided in this Declaration.

6.5 Individual Assessments. Any maintenance, repair, or replacement within the Property arising out of or caused by the act or failure to act of an Owner and/or the Owner's failure to fulfill any obligations contained in this Declaration, including the Owner's family, tenants, guests or invitees, shall be effected at the Owner's expense and an Individual Assessment therefor shall be made against the Owner's respective Lot, to the extent proceeds of insurance are not collected with respect to such loss. Additionally, any fine imposed by the Board in accordance with the Bylaws or other expense of the Association incurred as a result of any Owner's failure to comply with the provisions of this Declaration, the Articles, Bylaws, or Rules, shall be charged to such Owner and the Owner's respective Lot as an Individual Assessment, including, but not limited to, party walls as provided in Article 2 hereof.

6.6 Special Assessments. In addition to the Common and Individual Assessments authorized above, subject to the provisions in Section 6.8 below, the Board may levy at any time, in accordance with the Bylaws, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a structure or capital Improvement, upon the Common Properties, including fixtures and personal property related thereto, or for defraying any other Common Expenses of the Association not originally budgeted, including shortfalls in Common Assessments. No action authorized in this Section shall be taken without the prior written consent of Declarant as long as Declarant owns any Lot. Such consent may be granted on the condition that the Special Assessment only be applied to Owners and Lots other than Declarant and Declarant-owned Lots, in which event Declarant and Lots owned by them shall be exempt from such Special Assessment. Special Assessments are not covered by Declarant's funding of the deficit set forth in Section 6.4 hereof.

6.7 Notice and Approval for any Special Assessment. Written notice of any meeting of Members called which includes the purpose of authorizing a Special Assessment, shall be sent to all Members not less than thirty (30) days in advance of the meeting, except in an emergency notice shall be sent not less than fourteen (14) days. If the required quorum is not present, such meeting may be rescheduled, subject to the same notice requirement. Any Special Assessment approved by a vote of at least a majority of the members present and voting either in person or by proxy at a duly noticed meeting shall be assessed as provided in this Declaration and in the By-Laws.

6.8 Proportionate Share of Assessment. Common Assessments and Special Assessments provided for in this Article 6 shall be allocated and assessed equally among all Lots required to make such payments, pursuant to Section 6.3 hereof. Each Member's proportional share of Common Assessments and Special Assessments, appurtenant to each Lot is equal to 1/95 of said Common Assessment and/or Special Assessments.

6.9 Assessment Roster and Notices. The Association shall maintain a roster of the amount of all Assessments against each Lot, which shall be calculated in accordance with this Article 6. The roster shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of such Assessments and the due date(s) thereof shall be sent to every Owner subject to such Assessments. The Association shall, upon reasonable request of any Owner, furnish to such Owner or any prospective purchaser or the purchaser's mortgagee a certificate in writing signed by an officer of the association setting forth the amount of current Assessments and whether any delinquencies exist. Such certificate may be relied upon by any prospective purchaser or mortgagee named in the certificate and, as to such purchaser or mortgagee shall be conclusive as to the information set forth therein. A reasonable charge may be levied by the Association for such certificate.

6.10 Due Dates for Special or Individual Assessments. Any Individual Assessment or Special Assessment shall be payable pursuant to written notice to each Owner by the Board, unless any such Assessment is deemed by the Association to be of an emergency nature, in which case such Assessment shall be payable within ten (10) days after notice thereof.

6.11 Working Capital Contributions. Upon the first conveyance of each Lot and completed residence by Declarant to any Person, other than an Institutional Mortgagee acquiring title by foreclosure or deed in lieu of foreclosure, the purchasing Owner shall pay to the Association a sum equal to three months of assessments as a working capital contribution ("Contribution") to the Association. The Contribution shall not be considered an advance payment of Assessments and shall be placed in the general operating fund of the Association so that the Association will have funds available to be used by the Association for start-up expenses, general operating expenses, Common Expenses or otherwise as the Association shall determine from time to time in its sole discretion, including reimbursement of various expenditures of Declarant.

ARTICLE 7

EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION

7.1 Effect of Non-Payment of Assessments; Remedies of the Association. A lien is hereby imposed upon each Lot to secure the payment of all Assessments now or hereinafter imposed on the Lot by the Association (the "Assessment Lien"). The Assessment Lien shall relate back to and be effective from the date the Declaration was originally recorded, October 26, 2000, and shall include all costs of collection, including reasonable attorneys' and legal assistants' fees and costs (including any appeal and bankruptcy proceedings), late charges, and interest as herein provided.

- a) Any installment of a Common Assessment, Individual Assessment, or Special Assessment not paid within the time periods as provided in Article 6 hereof shall bear interest from the due date of such installment at the highest rate of interest allowed to be charged under applicable law, or any greater interest which may be lawfully charged under any amendments to applicable law, or if no such rate is applicable, then at the rate of eighteen percent (18%) per annum computed from the due date until such payment is made. If any installment of an Assessment is not paid when due, the Owner responsible therefor may be required further by the Board to pay a late charge equal to an amount not greater than the amount of the unpaid installment, plus all reasonable attorneys' and legal assistants' fees and costs.
- b) The Association may bring an action at law against the Owner(s) personally obligated to pay the same, or foreclose its Assessment Lien against the Lot of such Owner(s), or both.
- c) No Owner may waive or otherwise escape liability for the Assessments provided for herein by non- use of the Common Properties or abandonment of the Owner's Lot.
- d) If any installment of a Common Assessment is not paid when due, an acceleration notice may be mailed to the Owner and to each Institutional Mortgagee which has requested in writing a copy of the notice. If the delinquent installment(s) of Common Assessments and any interest and late charges thereon are not paid in full on or before the date specified in the notice, all of the unpaid balance of the annual Common Assessment, including any installments to be due for the remainder of the fiscal year, shall immediately become due and payable upon written notice by the Association, which may enforce the collection thereof and all charges thereon in the manner authorized by law and this Declaration. The Association in its sole and complete discretion may negate an acceleration; however, the action must be in a writing signed by an authorized Association agent.
- e) Any payments made received by the Association by any Owner shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the earliest delinquent assessment. The tender of a payment for less than the total claimed by the Association shall not be a waiver, accord, or satisfaction, unless the intent for a waiver, accord or satisfaction is expressly acknowledged in writing by the Association.

7.2 Notice of Lien. The Association shall send the Owner of a Lot a written notice or demand for past due assessments, including, but not limited to, any attorneys' and legal assistants' fees and costs associated with the preparation and delivery of a written notice or demand, forty five (45) days before the Association files a Claim of Lien. The written notice or demand shall be sent by registered or certified mail, return receipt requested, and by first-class United States mail to the Owner of the Lot at the Lot's address.

- a) The Claim of Lien must recite a good and sufficient legal description of any such Lot, the record Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid Assessment at the rate set forth in Section 7.1 hereof, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said Assessment Lien and late charges), the name and address of the Association as claimant, and the due date for delinquent assessment installments secured by the lien.
- b) Each Claim of Lien includes and secures all monetary obligations of the Unit and of the Unit Owner to the Association, then due and all monetary obligations coming due after the Claim of Lien is executed, regardless of when levied, until the time the Claim of Lien is satisfied, except as specifically provided in this Declaration and as otherwise is specifically required by law.
- c) Such Claim of Lien shall be signed and acknowledged by a duly authorized officer or agent of the Association. However, an omission of any of these items shall not invalidate the Claim of Lien except as to another lienor of the Lot materially prejudiced by the omission.
- d) Filing of the Claim of Lien shall not be a prerequisite to creating the lien (which is created by this Declaration), nor shall the lien's priority be established by such Claim of Lien (priority being based on the date of recording this Declaration, subject to the provisions of Section 7.3 hereof). The Assessment Lien shall continue until fully paid or otherwise satisfied, and shall secure any and all Assessments, costs, charges, late fees, interest and reasonable attorneys' fees which accrue subsequent to execution of the Claim of Lien. The Claim of Lien shall be recorded by the Association in the Public Records of the County.
- e) An action to foreclose an Assessment Lien may be brought by the Association forty five (45) days after the Owner of the Lot has been sent notice of the Association's intent to foreclose and collect the unpaid amount. The written notice or demand shall be sent by registered or certified mail, return receipt requested, and by first-class United States mail to the Owner of the Lot at the Lot's address.

The time limitations in this Section 7.2 do not apply if the Lot is subject to a foreclosure action or forced sale of another party, or if an Owner of the Lot is a debtor in a bankruptcy proceeding.

7.3 Subordination of the Lien to Institutional Mortgages.

- a) For Institutional Mortgages effective before the date of this Section 7.3 restriction, an Institutional Mortgagee that obtains title to a parcel by deed in lieu of foreclosure or by a purchase at the public sale resulting from the Institutional Mortgagee's foreclosure judgment in a foreclosure, such Institutional Mortgagee, its successors and assigns shall not be liable for accrued Assessments or Common Expenses which became due prior to such acquisition

of title unless such accrued Assessment or Common Expenses are secured by a Claim of Lien for Assessments that is recorded prior to the recording of the mortgage.

b) For Institutional first mortgages effective after the effective date of this Section 7.3 restriction, the liability of an Institutional first mortgagee, or its successor or assignee as a subsequent holder of the Institutional first mortgage who acquires title to a parcel by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the Institutional first mortgagee's acquisition of title, shall be the lesser of:

- (i) The parcel's unpaid common expenses and regular periodic or special assessments that accrued or came due during the twelve months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or
- (ii) One percent of the original mortgage debt.

The limitations of this Section for Institutional Mortgagee liability applies only if the Institutional Mortgagee filed suit against the Lot Owner and initially joined the Association as a defendant in the mortgage foreclosure action. If the Association acquires title to a Lot through a foreclosure of its lien for assessments or a deed in lieu of foreclosure, then the Association is not liable for any unpaid assessments, late fees, interest, or reasonable attorneys' and legal assistants' fees and costs that came due before the Association's acquisition of title. Notwithstanding the above, these liability limitations shall be expanded in the Association's favor to the fullest extent permitted by law, as amended and interpreted by the courts from time to time.

7.4 Foreclosure Sale. The Assessment Lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through a duly authorized officer or agent, shall have the power to bid on the Lot at foreclosure sale, with credit given for the amount of the judgment, and to acquire and hold, lease, mortgage and convey the same.

7.5 Curing of Default. Upon the timely curing of any default for which a Notice of Lien was filed by the Association (including payment of all delinquent principal, interest, late charges, and costs of collection), a duly authorized officer or agent of the Association shall record an appropriate release of the Assessment Lien upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed Two Hundred Fifty Dollars (\$250.00), to cover the cost of preparing and recording such release.

7.6 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and under law or in equity, including a suit to recover a money judgment for unpaid Assessments, as above provided. The Association may suspend the voting rights of an Owner for non-payment of Assessments that are delinquent in excess of ninety (90) days.

ARTICLE 8

RIGHTS OF INSTITUTIONAL MORTGAGEES

8.1 General Lender Rights. Upon written request to the Association by an Institutional Mortgagee, or the insurer or guarantor of any Institutional Mortgage held by an Institutional Mortgagee encumbering the Property or a Lot or residence on a Lot, conditioned on such notice or request specifying the name and address of the requesting party, then such party shall be entitled to prompt written notice of:

- A. any condemnation or casualty loss that affects either a material portion of the Property or any Lot or residence on a Lot encumbered by its Institutional Mortgage;
- B. any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot or residence on a Lot on which it holds the Institutional Mortgage;
- C. a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- D. any proposed action which requires the consent of a specified percentage of Institutional Mortgagees.

8.2 Financial Statement. Any Institutional Mortgagee, upon written request, shall be entitled to receive from the Association a financial report for the immediately preceding fiscal year, pursuant to Section 6.9 hereof

8.3 Consent of Institutional Lenders. Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgage(s) encumbering the Property or any Lots is required by this Declaration, the Articles, the Bylaws, or any applicable statute or law, to any amendment of the Declaration, the Articles, or the Bylaws, or to any action of the Association, or to any other matter relating to the Property, the Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by such holders). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), which response must be received by the Association within thirty (30) days after the holder receives such request, and if such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where required, may be evidenced by an affidavit signed by all of the directors of the Association, which affidavit, where necessary, may be recorded in the public records of the County, and which affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained. The foregoing shall not apply where an Institutional Lender is otherwise required to specifically join in an amendment to this Declaration.

8.4 Amendments. Any Institutional Mortgagee who has registered its name with the Association shall be provided with written notice prior to the effective date of any proposed, material amendment

to this Declaration, or the Articles or Bylaws, or prior to the effective date of any termination of an agreement with the Management Company.

ARTICLE 9

MAINTENANCE AND REPAIR OBLIGATIONS

9.1 Maintenance Obligations of Owners. Except for the duty of the Association to provide for maintenance and other services as enunciated in Section 5.2 of this Declaration, it shall be the duty of each Owner, at the Owner's sole cost and expense, to maintain, repair, replace and restore the Lot, including all Improvements located thereon, including but not limited to the party wall as provided in Article 2 hereof in a neat, sanitary and attractive condition, as may be subject to the Owner's respective control in accordance with the terms of this Declaration, including, but not limited to the Owner's maintenance responsibilities set forth in Section 5.2(J) hereof. Owners shall remove at Owners' sole cost and expense any equipment, fixtures or any other item installed within or placed upon the Lot by Owners, including their agents, or other designees, upon request from the Board and/or the Association to remove same, as deemed necessary or desirable by the Board and/or the Association, in their sole discretion, to enable the Association to perform its maintenance and other services enunciated in Section 5.2(J) hereof. In the event that any portion of such Lot (i) falls into disrepair, (ii) is not properly maintained so as to create a dangerous, unsafe, unsightly, or unattractive condition, or (iii) otherwise violates any of the obligations stated in this Declaration, then the Association shall have the right, but not the duty, upon fifteen (15) days prior written notice, to correct such condition and to enter upon such Lot to make such repairs or to perform such maintenance as is required in the Association's reasonable discretion; provided, however, the Association shall have the right of immediate entry with respect to those portions of the Lot lying outside of the house or other enclosed structures in the event of an emergency. The cost thereof shall be charged to the appropriate Owner and shall be an Individual Assessment as to the respective Lot. The Owner of such Lot shall pay promptly all amounts due for such work, pursuant to written notice received from the Association in like fashion to an Individual Assessment. Any costs and expenses or collection may be added, at the option of the Board of Directors, to the Individual Assessment.

9.2 Maintenance Obligations of Association. The Association shall maintain, or provide for the maintenance of, all of the Common Properties and all Improvements thereon, as well as portions of the Lots, as more fully described in Section 5.2 hereof. The maintenance obligations of the Association shall include all recreational facilities, if any, owned or operated by the Declarant and/or the Association, or their respective successors, assigns, agents, employees or other designees, from time to time, commonly metered utilities, the interior and exterior of the recreation buildings, if any, owned or operated by the Declarant and/or the Association, or their respective successors, assigns, agents, employees or other designees, from time to time, and any and all utility facilities and buildings or other structures situated on the Common Properties, except if such facilities are to be maintained by either public utility companies, or some governmental agency. In addition, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which are on the Common Properties. The Association shall further maintain, reconstruct, replace and refinish any paved surface on the Common Properties. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine, in its sole judgment, to be appropriate.

9.3 Standard of Maintenance. All property, buildings and Common Properties within the Project shall be maintained in a safe, neat and well kept manner. It is understood that this Standard of Maintenance is not brand new, but Class A residential condition for its age, reflecting reasonable wear and tear. All sidewalks, roads, streets, driveways, parking areas and other paved or hard surfaced areas

located within the Property and intended for use by vehicular or pedestrian traffic shall be kept clean and free of debris at all times, and cracks, damaged, or eroding areas on same shall be repaired, replaced, or resurfaced as necessary or requested by the Town. All curbing and bumper stops shall be replaced if damaged. All striping including but not limited to parking space, traffic lane, and directional markings, within any road, street or parking area located within the Property shall be repainted as necessary or as requested by the Town, so that same will be clearly visible at all times. All landscaping shall be regularly maintained in a first class condition and appearance, including without limitations such replanting and, as from time to time necessary, mowing, trimming, fertilization and weed, insect and disease control. All dead or diseased sod, trees, plants, shrubs or flowers shall be promptly replaced. This maintenance standard applies to all landscaped areas within the Property including right-of-ways, swales and other areas within right-of-ways.

9.4 Repair and Reconstruction After Casualty. If a Dwelling Unit is damaged by fire or other casualty, its Owner shall promptly restore it to at least as good a condition as it was in before the casualty occurred. All such work shall be in accordance with the Dwelling Unit's original plans and specifications unless otherwise authorized and shall be otherwise subject in all respects to the provisions of Article 15 hereof entitled "Architectural Control".

ARTICLE 10

USE RESTRICTIONS

The Property shall be held, used and enjoyed subject to all of the terms, limitations and restrictions of the Declaration, including this Article 10; provided, however, these restrictions shall be further amplified and/or limited by either the Rules or the "Guidelines" (as defined in Section 15.2 hereof). Each of the Use Restrictions stated hereinafter may be regulated, enforced, or waived by the Association, through its Board or its designees. Each use of "Board" in this Article 10 shall include its designees, unless specifically prohibited in this Declaration or under Florida law. The Use Restrictions are as follows:

10.1 Clothes Lines. No outdoor clothes drying lines or related facilities shall be allowed within any portion of the Residential Property if such are visible from anywhere outside of each prospective Lot. The Board shall have the right to reasonably require each such clothes drying area to camouflage the presence of such clothes drying lines or facilities.

10.2 Trash. No trash or garbage cans, supplies, milk bottles, or other articles shall be placed outside of the Dwelling Unit, including, but not limited to on front or rear patios, except in the prescribed areas and on the days designated by the Board. Furthermore, the Board shall have the right to prescribe a "standard" trash or garbage container and/or recycling bins and containers in appropriate location to be used by each Owner. To provide a healthy environment and in order to eliminate odors and vermin, all trash and garbage must be placed in plastic bags in the prescribed garbage container and deposited ONLY in the areas and on the days designated by the Board, as provided above. The Common Properties shall be kept free and clear of rubbish, debris, and other unsightly material.

10.3 Automobiles and Commercial Vehicles. Except as provided below, or as otherwise approved by the Association from time to time, no commercial truck, commercial van, bus, recreational vehicle, mobile home, motor home, camper, trailer, vehicles with more than four (4) wheels, or similar vehicle may be kept overnight on the Property, including within the designated parking areas (the "Prohibited Vehicles"). Prohibited Vehicles include, but are not limited to, those (i) not designed primarily for the routine transportation of people, rather than equipment or goods, or (ii) bearing any advertising, logo, or other signs or having printed on the sides, front, or rear of same reference to any commercial undertaking or enterprise, or (iii) containing tool racks, saddle racks, or other elements of a commercial nature. Any vehicle the state registration for which contains a designation of the type of vehicle as anything other than "Automobile" shall be presumed to be prohibited hereunder, which presumption may be rebutted by substantial proof. In derogation of the above, a Prohibited Vehicle may be kept on the Property, but only if it is kept in the garages totally enclosed and not visible. No vehicles shall be repaired within the Property, except on an emergency basis. No vehicle shall be left within the Property for more than one business day if not capable of self-propulsion. All vehicles, including motorcycles, mopeds, etc., shall be equipped with effective sound muffling devices. The Association may, but shall not be obligated to, designate certain portions of the Common Properties, which may be relocated from time to time, for the parking of trucks, commercial vehicles, buses, recreational vehicles, mobile homes, trailers, boats, and campers. Any such area designated pursuant to this Section 10.3, in the sole and absolute discretion of the Association, be terminated for such use without cause. The Association shall have the authority to formulate appropriate Rules concerning the use of any such parking/storage area, including reasonable

charges therefore. The Association shall have the right to institute a parking decal program or similar program to distinguish member's vehicles from those of guests or others.

10.4 Boats. Except as provided below, no boat, yacht, vessel, watercraft or similar item shall be stored overnight on any Lot or any portion of the Property or Common Properties, unless (i) totally enclosed in a garage and not visible from the outside; (ii) stored within any water bodies or waterways located within the Common Properties specifically designated for such use; or (iii) unless permitted and in accordance with the Rules, from time to time. If permitted by the Board, all boats, yachts, vessels, watercraft or similar items shall be stored on the Common Property in accordance with and shall comply with all applicable governmental and quasi-governmental rules, regulations and requirements. The Association shall have the authority to promulgate guidelines ("Boat Guidelines"), rules, and regulations further restricting the use and type of boats permitted, which includes but is not limited to the right to place restrictions on the height, length, weight, condition, and type of boat permitted to be located within the Common Properties. The Association may, but shall not be obligated to, designate certain portions of the Common Properties, which may be relocated from time to time, for the parking, storage or keeping of boats. Any such area(s) designated pursuant to this Section 10.4 may, in the sole and absolute discretion of the Association, be terminated for such use without cause. The Association shall have the authority to formulate appropriate Rules concerning the use of any such parking/storage area, including reasonable charges therefore, and the use of all waterways or water bodies located within the Property. Any person(s) operating a boat within any waterway or water body located upon the Property or Common Properties shall be properly qualified to operate said boat in accordance with all governmental requirements from time to time and shall at all times comply with all governmental requirements relating to operation.

10.5 Agents of Association. No owner or resident may direct, supervise, or in any manner attempt to assert control over the employees or agents of the Association, unless such person is an officer or director of the Association acting within their scope of authority.

10.6 Construction of Improvements. During construction of any permitted Improvements on a Lot, the Lot and all other portions of the Property shall be kept in a clean, neat and orderly condition at all times. Any debris, trash or mud resulting from the construction shall be promptly removed or remedied, as appropriate, from the Lot and the Property. After commencement of construction of any permitted Improvements on any Lot, the work thereon shall be diligently pursued and completed so that Improvements shall not remain in a partly finished condition for any period of time longer than that which is absolutely required.

10.7 Nuisances. No Owner shall make or permit (i) any loud and/or disturbing noises of a continuing nature, (ii) any noxious or offensive activity, (iii) any emanation of unpleasant odors, or (iv) any other nuisance or annoyance by himself, his family, employees, agents, visitors, and licensees, nor do or permit anything by such persons that will interfere with the reasonable rights, comforts or conveniences of the Owners. Any ultra-hazardous activity permitted or undertaken by any Owner within any portion of the Property shall be a nuisance, subject to extra protection and/or assurances of safety provided to the Board.

10.8 Antennas. No radio or television installation may be permitted on a Lot which interferes with the television or radio reception of another Lot. No exterior antenna, aerial, satellite dish or other apparatus for the transmission of television, radio or other signals of any kind shall be placed, allowed or maintained upon any portion of a Lot except in conformance with applicable Town ordinances and without the prior written consent of the Board. The Board shall have the right to promulgate rules

relating to the size, dimension, height, and location in which the foregoing approved items may be located on a Lot and may, at its discretion, at the time of installation or at any time subsequent thereto, require a parallel shrubbery to camouflage the presence of such item.

10.9 Signs. No sign, advertisement, notice or other lettering (except street numbers in front of Lots or names and addresses on mail boxes) shall be exhibited, displayed, inscribed, painted or affixed, in, on or upon any part of the Property without the written consent of the Board. The Board shall have the right to prohibit any signs offering property for sale or rent, or limit the size of such sign. No Owner shall cause any sign, advertisement, notice or other lettering to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, patios, windows or roof, unless approved by the Board.

10.10 Prohibited Parking. No parking shall be permitted in sidewalks or swale areas, and all parking shall only be permitted in designated parking spaces. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the Rules and Regulations promulgated by the Board from time to time may be towed, without prior warning, at the sole expense of the owner of such vehicle.

10.11 Rules and Regulations. There are current Rules of the Association; provided, however, the Association may adopt additional reasonable rules and regulations, or amend or eliminate those operative from time to time, pertaining to the use and maintenance of the Property, including rules and regulations relating to any of the Common Properties.

10.12 Garages. No Owner shall cause any garage on his Lot to be permanently enclosed, converted, or otherwise remodeled to allow for occupancy of any occupants of the Lot, without first obtaining necessary governmental approval(s), as well as prior written approval by the Board. Garage door must be maintained closed unless the garage is being used at the moment.

10.13 Fences. Fences, other than any provided by Declarant, shall not be erected, removed or maintained upon the Residential Property, until all necessary permits and approvals have been issued by the Town and/or any other governmental entity having jurisdiction thereof, and until the height, length, type, design, composition, material, color and location shall have been approved by the Board. All fences, if permitted, must be kept in good repair by the Owner, at the Owner's sole cost and expense shall have access gates of at least 30" on both sides and may not be locked. The Board shall have the right to promulgate standards and/or guidelines further restricting the height, length, design, composition, material, color and location of any fence to be erected on the Property. If fences are permitted, the Board may, in its sole discretion and at the time of installation or at any time subsequent thereto, require a parallel shrubbery to camouflage the presence of such fence. Any fence erected or constructed on a Lot shall be subject to any and all easements located within the Lot, and the Owner thereof shall be responsible to repair and/or replace, at its expense, any damage caused to the fence and/or landscaping which results from any use of an easement for the purpose for which the easement is intended.

10.14 Pets and Animals. Only common household pets belonging to Owners (or those occupying Lots through the authority of Owners), and pets which have been approved by the Board, will be allowed within the Property, subject to the following further restrictions: (1) Only common household pets may be kept in a Lot; (2) No pet shall be permitted outside a Dwelling Unit except on a leash and at all times under the control of its Owner; (3) No other animals, livestock or poultry of any kind shall be kept on any portion of the Property; (4) No pets may be kept for the purpose of breeding

or for any commercial purposes whatsoever; (5) No pets shall be allowed to constitute a nuisance; (6) Each Owner shall walk his pet only in areas designated by the Board, from time to time, as "Pet Walk Areas"; and each Owner shall promptly remove and dispose of waste matter deposited by his pet through a proper sewage receptacle; (7) The Board shall have the right to promulgate Rules further restricting the keeping and walking of pets.

10.15 Emergencies. In case of any emergency originating in or threatening any Lot, the Board or any individual authorized by its shall have the immediate right, but not the obligation, to enter any Lot for the purpose of remedying or abating the cause of such emergency, at the Board's discretion, notwithstanding that the Owner of such Lot is present at the time of such emergency.

10.16 Solicitation. There shall be no solicitation by any person anywhere in the Property for any cause, charity, or any purpose whatsoever, unless specifically authorized by the Board.

10.17 Insurance. Nothing shall be done or permitted by any Owner which would increase the rate for any insurance maintained by the Association, or cause such insurance to be cancelled or not renewed by the insurer.

10.18 No Interference with Construction. No Owner shall interfere with or impede any of Declarant's construction and marketing activities within the Property so long as Declarant shall be performing same.

10.19 Business Use. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements and other applicable governmental regulations for the Property; (c) the business activity does not involve persons coming on to the Property who do not reside in the Property or door-to-door solicitation of residents within the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The terms "business" and "trade" as used in this Section 10.18 shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor.

10.20 No Temporary Buildings. No out-buildings, portable buildings, temporary or accessory buildings or structures, storage buildings shall be erected, constructed or located upon any Lot for storage or otherwise, without the prior written consent of the Board.

10.21 Leasing of Lot. Lots shall not be leased without the prior written approval of the Association, subject to the Rules and leasing guidelines established by the Board from time to time. The term "leased" includes but is not limited to the use of a Lot in exchange for any type of compensation, monetary or otherwise. A Lot Owner intending to make a bona fide lease of a Lot shall deliver to the Association, so it is received no later than thirty days before the lease commencement date, an Application to lease. The Application to lease shall include a consent to a criminal

background check for all intended occupants sixteen years of age and older, a transfer fee, and a security deposit.

(a) Approval/Disapproval. Within twenty-one days of the Association's actual receipt of a complete Application to lease with any requested supplementary information, then either: the Association shall provide in writing an approval of the lease; or, the lease is deemed not approved and the lease shall not occur. A lease shall not commence and a lessee shall not occupy a Lot before the Lot Owner obtains the written approval of the lease from the Association.

(b) Security Deposit. A Lot Owner seeking to lease the Owner's Lot shall provide the Association a security deposit in an amount determined by Rule, and if no Rule, then in an amount equal to the average monthly rent set forth in the lease. The security deposit shall protect the Association against damage to the Common Area and for other losses concerning, regarding or relating to the tenant and lease; however, the Association's claims are not limited to the amount of the deposit. Within fifteen days after a lessee vacates a Lot, the Association shall refund the full security deposit to the Owner or, if a deduction is made for a loss incurred or expected to incur, provide written notice to the Owner of any claim made against the security. The Association shall have no duty or obligations to a lessee concerning, regarding, or with relation to a deposit. Disputes under this subsection shall be handled in the same fashion as disputes concerning security deposits under Florida Statutes §83.49.

(c) Bona fide. An Application and a proposed lease shall not be *bona fide*, if any monetary obligation is due to the Association from the Lot Owner or concerning the Lot, or if the Association reasonably believes that a lessee, or an individual intended to occupy the Lot, has:

(i) A felony conviction for a crime of violence, moral turpitude, sexual offense, sexual battery, sexual abuse or lewd and lascivious behavior, sale or possession of a registered or controlled substance;

(ii) Within ten years before the date of the Application a felony conviction for a crime of theft, dishonesty, or, destruction of property;

(iii) Within ten years before the date of the Application a conviction of two or more first degree misdemeanor charges;

(iv) An intent, history or other factor indicating a pre-disposition to violate any of the Association's use restrictions, including, but not limited to a history of: destructive behavior; disregard for the rights and property of others as evidenced by criminal history, participation in a social organization or association with a reputation of such conduct, or by conduct or in the neighborhood of the Property or otherwise;

(v) Been indicted or is the subject of a pending information concerning any of the acts above;

(vi) A real estate company, broker, salesperson or other agent for sale or sub-leasing with a history of screening proposed purchasers or lessees inadequately, or attempting to enter into leases without prior Association approval;

(vii) Has a history of financial irresponsibility, which may include, without limitation, low credit rating, unpaid debts, a judgment for failure to pay a debt, a foreclosure or deed in lieu of foreclosure for which the prospective lessee, or any of the proposed occupants was a mortgagor; or,

(viii) Provided information to the Association that contained material misrepresentations or inaccuracies regardless of the lessee's intent.

(d) Restriction. The Association may, but is not required to, disapprove a lease if twenty-three or more Lots are leased at the time of the submission of the Application to lease. Leasing of a Lot is prohibited for the first twenty-four months that the Owner of the Lot holds record title of the Lot as shown in the Public Records of Palm Beach County, Florida; however, the prohibition on leasing during the first twenty-four, rather than twelve months, of ownership shall not apply to a Lot:

(i) Acquired by the Owner before the effective date of this restriction;

(ii) Whose Owner obtained title to the Lot by inheritance or devise and the transferee Owner was either: (1) the spouse, domestic partner, grandparent, parent, child, grandchild, sibling, aunt or uncle of the transferor; or, (2) an individual who resided in the Lot with the immediate prior Owner for a period no less than one year immediately before Owner's death;

(iii) Whose title transferred to the Owner while the Lot was subject to a lease approved by the Association and as a condition of the transfer of title the Owner takes title subject to the lease, but the lease may continue only until the end of the approved lease term at which time the twenty-four month prohibition on leasing set forth above shall commence;

(iv) Whose Owner was the holder of a mortgage encumbering the Lot, if the Owner's title was acquired either by a deed in lieu of foreclosure of that mortgage, or by a certificate of title issued in a proceeding foreclosing that mortgage after a judgment of foreclosure and a clerk's sale;

(v) Whose Owner is experiencing a significant financial hardship that was not of the Owner's creation, and the factual circumstances of the hardship were not known and could not have been known by the Owner before contracting for purchase of the Lot and the Association provides written approval of the hardship exemption; however, the Association's written approval of an Owner's written request for a hardship exemption may be denied in the Association's discretion.

A. The Owner's written request must state the specific facts justifying the exception and shall be supplemented by any and all additional information that the Association may request from the Owner; and,

B. No more than one hardship request shall be submitted for the Owner(s) of a Lot.

Or,

(vi) Owned by the Association or an entity formed or controlled by the Association.

(e) Term. A lease shall be for a term of twelve months with no early termination. No more than one lease shall commence per Lot in any twelve-month period. No lease shall have a renewal provision, a renewal being a new lease; however, by Rule the Association may authorize a limited application for a renewal.

(f) Lease Renewal. An Owner seeking approval of a lease renewal, with the same occupants and the same lease terms, except for the dollar amount and the lease term, must deliver to the Association so it is received no more than sixty days and no less than thirty days before the lease commencement date an Application to lease.

(f) Sublease/Assignment. No subleasing, subdividing, or assignment of a lease shall occur. No renting of any portion of a Lot shall occur, only the possession of an entire Lot being permitted to be transferred by a lease. Transient accommodations shall not be provided.

(h) Form. Each leases agreement shall be in writing, and the lease, lessees, occupants and guests shall, even if not stated: be subject in all respects to the terms and conditions of this Declaration and the Rules, and automatically incorporating amendments to each as adopted from time to time; providing that any failure to comply with such terms and provisions shall constitute a breach of the lease; and, upon a breach, that the Association, as the agent of the Owner, shall have the right to terminate the respective lease, and initiate eviction proceedings with the Association retaining the right to retain possession or providing procession to the Owner, the attorney's fees and costs for which being a special assessment against the Lot and a personal obligation of the lessee and the Owner. The Association by Rule may require the Lot Owner to utilize a form of lease agreement other lease provisions. Notwithstanding the lease of an Owner's Lot, liability and obligations of the Owners created hereunder, including the Rules, shall continue unabated.

(i) Owner Rights. A Lot Owner automatically delegates the Owner's rights of use and enjoyment of the Common Area to the lessee of the Owner's Lot and in so doing, the Lot Owner relinquishes said rights during the term of the lease except voting rights; however, such Lot Owner shall continue to be responsible for all of the Lot and the Lot Owner's obligations to the Association, including but not limited to the payment of all assessments, including any assessment which may be occasioned by such lessee.

(j) Lessee Monetary Obligations. In the event that Assessments levied against a Lot or Lot Owner or any monetary obligations of the Lot or Lot Owner are delinquent, then the lessee, upon notice by the Association, shall be jointly and severally liable with the Lot Owner for the delinquent Assessments and monetary obligations, up to the amount of monies due from the lessee to the Lot Owner from the date of the Association's notice. The lessee shall pay all monies, whether as rent or otherwise, owing under the lease directly to the Association until payment of the Lot's and Lot Owner's Assessments, monetary obligations, interest, late charges, collection costs, attorney's fees and court costs are paid in full for which the Lot Owner, contingent upon a default, transfers, assigns, conveys, set over and delivers to the Association all monies, whether as rent or otherwise, owing under the lease with the right but without the obligation to collect all of said monies which may come due under the lease.

(i) The Association may communicate to the lessee the amount the Association claims due from the Owner;

(ii) The Lot Owner irrevocably authorizes the lessee to rely upon and comply with any notice of demand from the Association for payment to the Association of any monies due under the lease; and

(iii) Upon notice and to the extent monies are due from lessee to the Lot Owner pursuant to the lease, then the lessee is jointly and severally liable with the Lot Owner for all Assessments and installments, interest, late charge, collection costs, attorneys' fees and court costs that come due against the Lot.

10.22 Personal Property. No items of personalty including but not limited to lawn furniture, toys, ladders, garden equipment statues or lawn ornaments, may be stored or placed on the front or side portion of any Lot, and/or left on the front or side portion of a Lot overnight. Lawn furniture and toys are restricted to the rear of each Lot and should be hidden so that they are not readily visible from any street within the Project. Notwithstanding anything contained herein to the contrary, no children play equipment, including but not limited to swing sets, jungle gyms, slides and sand boxes, may be erected on any portion of a Lot or Common Area without the express written approval of the Board.

10.23 Water Bodies. In addition to all restrictions, laws and ordinances imposed by applicable governmental or quasi-governmental authorities from time to time, there shall be no dumping of any materials whatsoever (whether organic or otherwise) within the water bodies located upon or abutting the Property. In addition to all restrictions, laws and ordinances imposed by the applicable governmental or quasi-governmental authorities regarding the use of the water body, the Board shall have the right to promulgate rules, from time to time, further restricting the use of the water bodies as the Board deems necessary or desirable in its sole discretion. Neither Declarant, the Association nor any of their officers and/or directors, have made any representations to the Owner(s) regarding Owner's and/or Association's use right or interest in the beaches and/or water bodies located upon or abutting the Property.

10.24 Recreational Facilities/Hours of Operation. The recreational facilities located upon the Property shall be available for the Association, Owners and Guests use during the recreational facilities' hours of operations. The recreational facilities' hours of operations are from 8:00 a.m. to 10:00 p.m., Monday through Sunday. The recreational facilities' hours of operation may be amended from time to time by the Board with the consent of the Town, by posting the new hours of operation at the recreational facilities.

10.25 Governmental Regulations. No use shall be allowed on the Property except in conformance with applicable governmental regulations, including but not limited to, state, federal, county and Town Ordinances, statutes and/or regulations.

10.26 Hurricane Shutters. The Association may, from time to time, establish hurricane shutter specifications which comply with the applicable building code, and establish permitted colors, styles and materials for hurricane shutters. The Association shall approve the installation or replacement of hurricane shutters conforming with the Board's specifications. **All shutters shall remain open unless and until a storm watch or storm warning is announced by the National Weather Center or other recognized weather forecaster. All storm shutters shall be removed or opened within seventy-two (72) hours after any storm watch or storm warning has passed or been lifted by the National Weather Center or any other recognized weather forecaster.** An Owner or occupant who plans to be absent during all or any portion of the hurricane season must prepare his Dwelling Unit

prior to his departure by designating a responsible firm or individual to care for his Dwelling Unit should a hurricane threaten the Dwelling Unit or should the Dwelling Unit suffer hurricane damage, and furnishing the Association with the name(s) or such firm or individual. Such firm or individual shall be subject to the approval of the Association. The word "care" shall include installing the shutters once a storm watch or a storm warning is announced, and/or removing or opening the shutters once the storm watch or storm warning is lifted or has passed. No shutters are to be permanently left in place on any dwelling unit, save and except for when a storm watch or storm warning is in effect, as stated above.

10.27 Exceptions. All of the Use and Restrictions set forth in Sections 10.1 through 10.20 hereof shall not apply with respect to the customary and usual activities of Declarant in connection with its construction, development and marketing of the Property. Without limitation, this shall include:

1. The construction of buildings, or any other Improvements within the Property; and
2. The sale of residences by Declarant or any other person or entity initially constructing residences within any portion of the Property.

10.28 Guest. "Guest" for this Section shall mean and refer to a person who is occupying a Lot but is not that Lot's Owner, the approved lessee, an approved occupant, or an individual who resided in the Lot with the Lot Owner within the last year as a member of the Lot Owner's economic living unit.

(a) Accompanied Guest. An Accompanied Guest may visit a Lot only if the Lot Owner or approved lessee is present in the Lot. If a Guest is visiting a Lot for eight or more overnights, consecutive or non-consecutive, in any month, then the Lot Owner or approved lessee of a Lot must no less than twenty-one days before the Guest's arrival:

- (i) provide written notice of the Guest's arrival to the Association, including the completion of the Association's Guest form; if any, and,
- (ii) register the Guest's vehicle with the Association.

(b) Unaccompanied Guest. An Unaccompanied Guest may visit a Lot when the Lot Owner or approved lessee is not present only if the Guest is a parent, child, grandchild, or sibling by blood, adoption or marriage of a Lot Owner or approved lessee; and, if the Guest is visiting a Lot for more than fourteen consecutive overnights, then the Lot Owner or approved lessee of the Lot must no less than twenty-one days before the Guest's arrival:

- (i) provide written notice of the Guest's arrival to the Association, including the completion of the Association's Guest form; if any,
- (ii) provide to the Association written documentation of the Guest's relationship to the Lot Owner or approved lessee with the written notice; and,
- (iii) register the Guest's vehicle with the Association.

(c) Notice. The written notice to the Association shall be on a form provided by the Association, if any, and shall include for each Guest:

- (i) the name of the Guest;
- (ii) the Guest's duration of stay on the Lot, including the date(s) of arrival and the date(s) of departure; and,
- (iii) the Guest's vehicle model, color and tag number.

(d) Guest's Vehicle. A Guest's vehicle required to be registered with the Association, must be registered on a form provided by the Association. A Guest's vehicle is subject to the Declaration and the Rules and Regulations of the Association.

ARTICLE 11

DAMAGE OR DESTRUCTION TO COMMON PROPERTIES

Damage to or destruction of all or any portion of the Improvements on Common Properties shall be handled in the following manner:

- A. In the event of damage to or destruction of Improvements on the Common Properties, if insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Improvements on Common Properties to be repaired and reconstructed substantially as they previously existed.
- B. If the insurance proceeds are within Twenty-Five Thousand Dollars (\$25,000.00) or less of being sufficient to effect total restoration to the Improvements on the Common Properties then the Association shall cause such Improvements to be repaired and reconstructed substantially as they previously existed. Any difference between the insurance proceeds and the actual cost of restoring Improvements on the Common Properties or building structures located on Lots shall be levied as a Special Assessment against each of the Owners and Lots and no consent of Owners shall be required as otherwise would be the case in the event of a Special Assessment over Twenty-Five Thousand Dollars (\$25,000.00). Declarant and Declarant-owned Lots shall be exempt from such Special Assessments, in accordance with Section 6.6 hereof.
- C. If the insurance proceeds are insufficient by more than Twenty-Five Thousand Dollars (\$25,000.00) to effect total restoration to the Improvements on the Common Properties, then the Members shall determine, by vote of two-thirds (2/3) of Member votes present in person or by proxy at a special meeting of the Members, duly called, whether (1) to rebuild and restore the Improvements on the Common Properties in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying a Special Assessment against all Lots, or (2) to rebuild and restore in a way which is less expensive than replacing these Improvements substantially the same manner as they existed prior to being damaged, or (3) to not rebuild the Improvements on the Common Properties and to retain the available insurance proceeds. If a decision is made to rebuild in a manner which would result in a change in the Improvements such new plans must receive the written approval of the Board, which may pre-approve plans to be submitted to the Members at a special meeting of Members. Declarant and Declarant-owned Lots shall be exempt from such Special Assessments, in accordance with Section 6.6 hereof.
- D. Each Owner shall be liable to the Association for any damage to the Common Properties and each Owner shall be liable to the Association and to the respective Owners of Lots ("Affected Owners") for any damage to building structures located on Lots which may be sustained by reason of the negligence or willful misconduct of any Owner, as well as the Owner's Family, tenants, guests and invitees, both minor and adult ("Negligent Owner(s)"). The Association has the right, but not the obligation, to pursue all available legal or equitable remedies against the Negligent Owner(s) for losses or damages sustained by the Association and/or the Affected Owners by reason of the negligent or willful misconduct of the Negligent Owner(s) and the Association is hereby authorized by the Affected Owners to act as their agent and is appointed as their attorney-in-fact for same to the extent the Association elects, in its sole discretion, to pursue any such remedies against the Negligent Owner(s). All expenses incurred

by the Association in connection with the foregoing, including attorneys' fees and costs, shall be deemed Common Expenses in accordance with Section 5.7 hereof. In addition, the Association shall have the right to charge such Negligent Owner(s) an Individual Assessment equal to the increase, if any, in any insurance premium due from the Association directly attributable to the damage caused by such Negligent Owner(s). In the case of Co-Owners of a Lot, defined in Section 3.2 of this Declaration, the liability of such Negligent Owner(s) shall be joint and several. The cost of correcting such damage shall be an Individual Assessment against the Lot and may be collected as provided herein for the collection of Assessments.

ARTICLE 12

PARTY WALLS

12.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of each dwelling unit (including fences, if any) upon The Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omission shall apply thereto.

12.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of Lots abutting same.

12.3 Destruction by Fires or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner of an adjoining Lot may restore it, and in the event the cost thereof is in excess of the insurance proceeds, the Owner of the other adjoining Lot shall contribute equally to pay such excess, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

12.4 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title. If any Owner shall neglect or refuse to pay his share under the provisions of the Articles, any other affected Owner is entitled to file a lien in the Public Records against the Lot of the defaulting Owner in the amount of such share plus attorney's fees and costs, and such lien may be foreclosed in the same manner as the lien of a mortgage.

12.5 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, any party may request the Board of Directors to settle the dispute, and the Board's decision shall be binding; provided, however, that the Board may elect not to act in this capacity, in which case each party shall choose an arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be made by a majority of all the arbitrators and shall be binding.

12.6 Alterations. The Owner of any Lot sharing a party wall with an adjoining Lot shall not cut openings in the party wall, nor make any alterations, additions or structural changes in the party wall without consent from the Owner of such adjoining Unit and the Association.

12.7 Perpetual Use. Each common wall to be constructed on the dividing line between the Lots is to be and remain a party wall for the perpetual use and benefit of the respective owners thereof, their heirs, assigns, successors and grantees, said Lots being conveyed subject to this condition and this condition shall be construed to be a covenant running with the land in perpetuity.

12.8 Right of Access. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Lots shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner and consent is hereby given to enter on the adjacent Lot to effect necessary repairs and reconstruction.

12.9 Location of Reconstruction. Whenever a party wall or any part thereof shall be rebuilt, it shall be erected in the same manner and at the same location where it shall initially be constructed and shall be the same size and of the same or similar materials and of like quality.

ARTICLE 13

INSURANCE

13.1 Common Properties and Building Structures Located on Lots. The Association shall keep all buildings, structures, fixtures and other Improvements located on the Common Properties, insured against loss or damage by fire or other casualty for the full insurable replacement value thereof in an amount equal to 100% of the then current replacement cost (excluding foundation, excavating costs and other items normally excluded from coverage) as determined by the Association's casualty insurance company (with reasonable deductibles), and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Owners. The insurance coverage with respect to the Common Properties shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds for Common Properties may be used by the Association for the repair or replacement of the property for which the insurance was carried, at the option of the Board. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

13.2 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Properties, or the building structures located on Lots, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article 11 of this Declaration.

13.3 Waiver of Subrogation. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Management Company, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

13.4 Liability and Other Insurance. The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief coverages, in such limited as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each Owner against liability to each other Owner and to the Association and vice versa. The Association may also obtain Workers' Compensation insurance and other liability insurance as it may deem desirable, insuring each Owner and the Association, Board of Directors and Management Company, from liability in connection with the Common Properties, the premiums for which shall be Common Expenses and included in the Common Assessments made against the Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and the Management Company against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof.

13.5 Insurance. Each Owner shall keep his Dwelling Unit insured in an amount not less than its full insurable value against loss or damage by fire, other hazardous covered by standard extended coverage endorsements, and whatever other risks are customarily covered with respect to dwellings similar to his Dwelling Unit in construction, location and use (such as flooding, vandalism and malicious mischief). Evidence of such coverage shall be furnished to the Association promptly upon the Board's request.

13.6 Failure to Perform. If an Owner fails to comply with the foregoing provisions of this Section, the Association may proceed in court to enjoin compliance with them. In addition, if the failure relates to the Owner's insurance obligations, the Association shall be entitled (though not obligated) to obtain the required coverage itself and to levy on the offending Owner a special assessment equal to the cost of the premium and, if it relates to his maintenance or restoration obligations, it shall take steps as the Board deems appropriate to compel such maintenance or restoration, and shall be entitled (though not obligated) to restore the neglected Lot and/or Dwelling Unit to the condition required by this Section and to levy on the offending Owner a special assessment equal to the cost of the work that was the Owner's responsibility may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and the Management Company, if any, against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

ARTICLE 14

ANNEXATION OF ADDITIONAL PROPERTY AND WITHDRAWAL OF PROPERTY

14.1 Annexation Without Approval of Class "A" Membership. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in a Supplemental Declaration. Such Supplemental Declaration shall not require the consent of the Members. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transfer or assignment is memorialized in a written, recorded instrument executed by Declarant.

14.2 Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex additional real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of not less than seventy-five percent (75%) of the Members of the Association. Annexation shall be accomplished by filing of record in the public records of the County, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by an authorized officer of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the Bylaws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section and to ascertain the presence of a quorum at such meeting.

14.3 Acquisition of Additional Common Properties. Declarant may convey to the Association additional real property, improved or unimproved, and upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense as a Common Property for the benefit of all of its Members.

14.4 Withdrawal of Property. Declarant shall be entitled to withdraw portions of the Property owned by Declarant from the terms and conditions of this Declaration, subject to the terms and conditions of this Section. For purposes of this Declaration, the portion of the Property withdrawn from the terms hereof shall be referred to as the "Withdrawn Property." In order to withdraw such portion of the Property from the terms of this Declaration, Declarant shall record in the Public Records of the County an instrument executed with the formalities of a Deed, which instrument shall make reference to this Declaration, state that the purpose of the instrument is to withdraw the Withdrawn Property from the terms and conditions of this Declaration, and contain a legal description of the Withdrawn Property. Declarant shall have the right to withdraw portions of the Property from the terms and conditions of this Declaration without the joinder, ratification or approval of the Association, any Owner, or any lienholder, provided that Declarant is the fee simple owner of the Withdrawn Property, and provided that the withdrawal of the Withdrawn Property shall not result in the reduction of the number of Lots within the Property or the substantial material reduction of the size of any Lot within the Property. Upon the withdrawal of the Withdrawn Property from the terms and conditions of this Declaration, the Withdrawn Property shall no longer be subject to the terms of this Declaration, including all exhibits hereto, or any other covenants, restrictions and/or regulations

provided herein or adopted hereunder, except for those easements, rights-of-way, or other portions hereof which, by their terms, specifically survive the termination of this Declaration, which shall include the withdrawal of such lands from the terms and conditions of this Declaration. The foregoing rights shall be in addition to those rights of the Declarant and the Association provided in Section 18.17 hereof.

14.5 Amendment. This Article 14 shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any portions of the Residential Property.

ARTICLE 15

ARCHITECTURAL STANDARDS

The Board shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committee established in Section 15.2 of this Article 15. This Article 15 shall not in any fashion be applicable to or binding upon Declarant and none of the provisions of this Article 15 may be amended without the Declarant's written consent so long as the Declarant owns any Residential Property.

15.1 Architectural Control for Exterior Changes. There shall be no: (i) construction, which term shall include within its definition, but shall not be limited to staking, clearing, excavation, grading, and other site work, construction or addition of any improvement to the exterior of a Unit or upon a Lot; (ii) exterior alteration or modification of existing Improvements; or (iii) plantings or removal of plants, trees, or shrubs, except in strict compliance with this Article 15, until the requirements of each have been fully met, and until the approval of the appropriate entities has been obtained. All Improvements constructed on any portion of the Property by any of the Owners shall be designed by and built in accordance with the plans and specifications of a licensed architect or engineer.

15.2 Architectural Review Committee. The Board shall have the right, pursuant to the Bylaws, to appoint certain of the Members to an Architectural Review Committee ("ARC"), which shall have exclusive jurisdiction over all original construction on any portion of the Property, as well as over all modifications, additions, or alterations made on or to existing houses and all other Improvements within the Property, subject to each Owner having the right of appealing to the Board any decisions of the ARC. The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines, application and review procedures, and building criteria (the "Guidelines"). The Guidelines shall be promulgated on behalf of the Association and shall be binding upon all of its Members. The ARC shall have authority to prepare and to amend from time to time the Guidelines subject to the approval thereof of the Board of Directors, and shall make the Guidelines available to Owners, builders, developers and contractors who seek to engage in development of or construction upon all or any portion of the Property, and such Owners, builders, developers and contractors shall conduct their operations strictly in accordance therewith.

15.3 Committee Members. Until all Lots have been developed and conveyed to purchasers in the normal course of development and sale, Declarant retains the right to appoint all members of the ARC, which shall consist of at least three (3), but no more than five (5), persons. There shall be no surrender of Declarant's right hereunder prior to conveyance of all Residential Property, except as otherwise set forth in a written instrument, in recordable form, executed by Declarant, which may be delivered in Declarant's sole and absolute discretion. Upon the expiration of such right, the Board shall appoint the members of the ARC, to consist of at least three (3); and no more than five (5) members.

15.4 Delegation of Authority and Application Procedure. The ARC may delegate its authority, except that all original construction on any portion of the Property may not be delegated, to the appropriate board or committee of any neighborhood association, council or group subsequently created or subsequently subjected to this Declaration so long as the ARC has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the ARC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

The Owner or its agent requesting such approval shall submit to the ARC each of the following: (a) plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, which shall be reviewed by the ARC for its approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation; (b) evidence that the contractor(s) employed by Owner are properly licensed under Florida law; and (c) evidence of insurance having been obtained which reasonably insures the risk undertaken. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of such Owner's residence, or to paint the interior of such residence any color desired. In the event that the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

15.5 No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

15.6 Variance. The ARC may authorize variances from compliance with any of the provisions of the Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require such waiver, but only in accordance with the Rules. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section 14.6, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

ARTICLE 16

FINES, PENALTIES, ETC.

16.1 Compliance by Owners. Every Owner and the Owner's tenants, guests, invitees and agents shall comply with this Declaration, and the Association's Articles of Incorporation, By-Laws, and Rules.

16.2 Litigation. The Association and each Owner may enforce this Declaration, and the Association's Articles of Incorporation, By-Laws, and Rules. Enforcement may include, without limitation, an action to recover sums due for damages, injunctive relief, declaratory relief, and any combination thereof, and the Association shall also have the right to impose fines, and suspend voting rights and use of Common Areas, except as limited below.

16.3 Fines and Suspensions. Fines and/or suspensions may be imposed upon an Owner and an Owner's tenants, guests and invitees for the failure of any of them to comply with this Declaration, and the Association's Articles of Incorporation, By-Laws and Rules.

(a) Fines and suspensions shall be limited as required by law, and if no limitation then a fine shall not exceed \$100.00 per occurrence, cumulative fines in excess of \$1,000.00 may be imposed, and if so, then the fine(s) are a lien against the Owner's Lot in the manner, priority, and enforcement as a lien for a delinquent assessment.

(b) The procedure for imposing fines and suspensions shall be as required by the Florida Homeowners' Association Act, Chapter 720 Florida Statutes, as amended from time to time; however, if no procedure is required, then the process (except for a suspension for the failure to pay a fee, fine or other monetary obligation to the Association addressed in Article 16.4) is as follows:

(i) Notice. The Association shall notify the Owner in writing of the violation. Included in the notice shall be the date and time of a meeting of the Board of Directors or of a delegated committee to handle violations, at which time the Owner is permitted to present reasons why penalties should not be imposed. At least fourteen (14) days notice of such meeting shall be given to the Owner and other persons being fined or suspended by posting in the U.S. Mail, or by personal delivery to the last address on record with the Association, and if no address, then the address of the Owner's Lot.

(ii) Hearing. A written decision shall be submitted to the Owner by not later than twenty-one (21) days after the meeting to the address at which notice of the meeting was posted or delivered.

(iii) Payment of Penalties. Fines are due and shall be paid no later than five days after notice is posted of imposition.

(iv) Non-exclusive Remedy. These fines and suspensions shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending

Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

(v) Board of Directors May Delegate Responsibility. All acts to be performed by the Board of Directors imposing and relating to fines and suspensions may be delegated by the Board to a committee appointed by the Board to handle violations.

16.4 Monetary Delinquency. If a Lot Owner is more than ninety days delinquent in paying any fee, fine, or other monetary obligation due to the Association, the Association may suspend the rights of the Owner, and/or the Owner's tenants, guests, and invitees, to use Common Areas and facilities until the fee, fine, or other monetary obligation is paid in full. The notice and hearing requirements under Article 16.3 do not apply to a suspension imposed under this Article 16.4.

16.5 Suspension Limit. A suspension of use rights shall not apply to that portion of Common Areas used to provide access or utility services to a Lot, nor prohibit the Lot's Owner and its tenant from having vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

ARTICLE 17

MORTGAGEE PROTECTION CLAUSE

17.1. RIGHTS OF INSTITUTIONAL MORTGAGEES. In addition to all other rights herein set forth and with respect to Improvements upon the Properties, institutional first mortgagees shall have the following rights (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control).

- (a) Each First Mortgagee of a Mortgage encumbering any Lot upon which a Dwelling Unit is situated, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot and Dwelling Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the By-Laws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.
- (b) Each First Mortgagee of a Mortgage encumbering any Dwelling Unit which obtains title to such Dwelling Unit pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage, shall take title to the Dwelling Unit free and clear of any claims of unpaid assessments or charges against such Dwelling Unit which accrued prior to the acquisition of title to such Dwelling Unit by the Mortgagee.
- (c) Unless at least seventy-five (75%) percent of the First Mortgagees (based upon one vote for each Mortgage owned, and seventy-five (75%) percent of the Owners have given their prior written approval, neither the Association nor the Owners shall:
 - (1) by act or omission seek to sell or transfer the Common Properties and the Improvements thereon which are owned by the Association, provided, however, that the granting of easements for utilities or for such other purposes consistent with the intended use of such property by the Association or the Declarant, or the dedication of the private road system to a governmental or quasi-governmental authority, or the transfer of the Common Properties to an unincorporated association of the Owners in accordance with the terms hereof shall not be deemed a transfer within the meaning of this clause;
 - (2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Dwelling Unit;
 - (3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of any portion of the Properties;
 - (4) fail to maintain fire and extended coverage on insurable portions of the Common Properties on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurance value (based on current replacement cost) less such reasonable deductions as the Board may deem appropriate;

(5) use hazard insurance proceeds for losses to any Common Properties for other than the repair, replacement or reconstruction of such Improvements (or for reserves for the repair, replacement or reconstruction of the Properties), or

(6) amend this Declaration or the Articles or By-Laws of the Association in such a manner that the rights of any First Mortgagee will be materially affected .

(d) First Mortgagees shall upon written request to the Association have the right to (i) examine the books and records of the Association during normal business hours, including current copies of the Declaration and its exhibits, and current rules and regulations (ii) receive an unaudited financial statement of the Association within ninety (90) days after each of its fiscal years closes, (iii) receive an endorsement to each insurance policy covering the Properties that requires the Institutional Mortgagee to be given any notice of cancellation provided for in the policy, (iv) receive from the Association written notice or any meeting of the Association's membership and to attend any such meeting and (v) receive timely written notice of casualty damage to or condemnation of any of any Lot on which a Dwelling Unit is situate and upon which it has a mortgage.

(e) All first Mortgagees who have registered their names with the Association shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of by-Laws of the Association and prior to the effective date of any termination of any agreement for professional management of the Common Properties following a decision of the Owners to assume self-management of the Common Properties, and (ii) immediate notice following any damage to the Common Properties whenever the cost of reconstruction exceeds Ten Thousand (\$10,000.00) Dollars, and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Common Properties.

(f) First Mortgagees may, jointly or individually, pay taxes or other charges which are in default and which may or have become a charge against any Common Properties facilities and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the laps of a policy, for such property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association and the appropriate Owners thereof.

ARTICLE 18

GENERAL PROVISIONS

18.1 Enforcement. This Declaration, including the Articles, Bylaws and Rules, may be enforced against any and all Owners by the Association, as well as Declarant so long as Declarant owns any portion of the Property. Enforcement by the Association (and Declarant) shall include and be governed by the following:

- A. Breach of any of the covenants contained in this Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by Declarant or the Association. Any judgment rendered in any action or proceeding to enforce this Declaration or the Bylaws shall include a sum for attorneys' fees, in such amount as the court may deem reasonable, as well as the amount of any delinquent payment, interest thereon, costs of collection, administrative costs and court costs.
- B. The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity with respect to nuisances, either public or , shall be applicable and may be exercised by Declarant or the Association.
- C. The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.
- D. The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.
- E. All remedies provided at law or in equity shall be deemed incorporated herein so as to permit the employment of all remedies permitted under Florida law.

18.2 Severability. Invalidation of any one of these covenants or restrictions or any part thereof by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

18.3 Term. Subject to the amendment provisions of Section 18.5 hereof, this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant, and their respective successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument, approved by 75% of the Members and 75% of the Institutional Mortgagees has been recorded terminating this Declaration. At such point of termination, no prescriptive rights shall be established regardless of the nature or duration of use of the Common Properties or any portion thereof.

Should the Members of the Association vote not to renew and extend this Declaration as provided herein, all Common Properties shall be transferred to a Trustee appointed by the Circuit Court for the County, which Trustee shall sell the Common Properties free and clear of the provisions hereof upon terms established by the Trustee and approved by the Court. The proceeds of such a sale

shall first be used for the sale, operation, maintenance, repair and upkeep of the Common Properties, including a Trustee's fee approved by the Court, then for the payment of any debts or obligations constituting a lien on the Common Properties. The excess of proceeds, if any, shall be distributed among the Owners equally. Only those easements which state that they shall survive termination hereof shall so survive unless otherwise required under Florida law.

18.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community facilities and Common Properties. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural, the singular and the masculine, feminine and neuter genders shall each include the others. This Declaration shall be read as cumulative to and not in limitation of the Master Covenants. The Board shall be the ultimate interpreter of this Declaration and an opinion of counsel that any such interpretation is not unreasonable shall establish the validity of any such interpretation.

18.5 Amendments. This Declaration may only be amended by the consent of a majority of the voting interests, either in person or by proxy at a Members' Meeting, or by the written consent of those holding a majority of the Members' voting interests.

- a) However, no amendment shall be permitted which has a material and adverse effect upon rights of an Institutional Mortgagee without the prior written consent of such Institutional Mortgagee, as appropriate.
- b) In the event any amendment is sought, notice shall be given to all Owners and Institutional Mortgagees who have requested notice pursuant to Article 8 hereof no less than thirty (30) days prior to the date of the Members' meeting at which such proposed amendment is to be considered.
- c) If any proposed amendment to this Declaration is approved by the Members as set forth above, an officer of the Association shall execute an amendment to this Declaration which shall set forth the terms of the amendment, which shall be effective upon its recording. Such amendment shall be recorded in the Official Records of the County.

18.6 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Properties to the public, or for any public use.

18.7 Notices. Any notice permitted or required to be delivered as provided herein shall (unless otherwise expressly set forth herein) be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any Person at the address for such Person contained in the records of the Association. Such address shall be used for all purposes, unless changed from time to time by notice in writing to the Association.

18.8 NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE

LAW, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN WRITTEN DOCUMENTS DELIVERED BY DECLARANT TO ANY OWNER, AND (B) AS OTHERWISE REQUIRED BY LAW.

18.9 Declarant Exemption. Anything in this Declaration to the contrary notwithstanding, so long as Declarant owns, occupies or uses any portion of the Residential Property, nothing herein shall be construed to prevent, limit, or impair Declarant's right and ability to complete development of the Property in any manner determined by Declarant from time to time, including, but not limited to, Declarant's right to operate and maintain models, gates, sales and leasing offices, construction activities, promotional activities and signs.

18.10 Information. The Association shall make available for inspection to Owners and Institutional Mortgagees, upon request, during normal business hours, current copies of this Declaration, the Articles, Bylaws, or any Rules concerning the Property, together with the books, records, and financial statements of the Association.

18.11 Voidability of Contracts. The Association shall not have the right to cancel any contract, lease, or management agreement entered into by the Association prior to Declarant turning over control of the Association to Owners other than Declarant, unless the Association has a right of termination "without cause" in such contract, lease, or management agreement, which is exercisable without penalty at any time after transfer of control upon not more than ninety (90) days notice to the other party.

18.12 Assignability of Declarant's Rights. The rights of Declarant under this Declaration, the Articles, and the Bylaws may be assigned any number of times, in whole or in any part, on an exclusive or non-exclusive basis by written instrument recorded in the public records of the County. Any partial assignee shall not be deemed Declarant, nor shall it be burdened by any of Declarant's obligations arising under this Declaration, except as expressly and specifically assigned and assumed. No assignee shall have any liability for any acts of Declarant or any prior declarant, prior to the date of assignment or transfer, unless such assignee is assigned and agrees to assume such liability.

18.13 Priority of Documents. This Declaration shall be paramount in those instances of irreconcilable conflict among or between it and the Articles, Bylaws, or Rules, in the absence of any express language indicating which document controls the particular subject matter; the Articles are next paramount, the Bylaws next paramount, and the Rules most subordinate.

18.14 Real Property Covenants. All of the restrictions, reservations, covenants, conditions and easements contained herein constitute covenants running with the land and shall rule perpetually unless terminated or amended as provided herein, and shall be binding upon all Owners as herein defined, and in consideration of receiving and by acceptance of any deed, grant, devise or mortgage, all grantees, devisees or mortgagees, their heirs, personal representatives, successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions of this Declaration and the Articles and Bylaws. Both the burdens imposed and the benefits derived from this Declaration shall run with each Lot, as herein defined.

18.15 Disclaimer. THE ASSOCIATION WILL STRIVE TO MAINTAIN THE PROPERTY AS A SAFE AND SECURE RESIDENTIAL ENVIRONMENT. HOWEVER, NEITHER THE ASSOCIATION NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND DECLARANT, AND ANY COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AGAINST LOSS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS, AND FURTHER THAT THEY ACKNOWLEDGE THAT NEITHER THE ASSOCIATION NOR THE DECLARANT HAS MADE ANY REPRESENTATIONS OR WARRANTIES TO ANY OWNER, TENANT, GUEST, OR INVITEE, NOR HAS ANY OF SUCH PARTIES RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN, AS OFFERED OR AGREED TO BY THE ASSOCIATION OR DECLARANT.

18.16 No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Properties or any part thereof, nor shall any person acquiring any interest in the Common Properties or any part thereof seek any judicial partition unless the Common Properties have been removed from the provisions of this Declaration. This Section 15.16 shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

18.17 Modification of Project. Subject to the applicable Town Ordinances, Declarant reserves the absolute right at any time and from time to time to modify the Project for all or any portion of the Property, and in connection therewith to develop residences upon the Property which are substantially different from the planned residences for the Property from time to time. Declarant makes no representations or warranties as to how the recreation areas will be developed or as to what, if any, Improvements will be constructed thereon. In the event Declarant changes the type, size, or nature of the residences or other Improvements to be constructed upon the Property or Common Properties, Declarant shall have no liability thereafter to any Owner. In addition, Declarant makes no representations or warranties as to the manner in which any other property outside of the Property will be developed, and shall have no liability to any Owner as regards the development of any other property in or around the Property.

18.18 Notices and Disclaimers as to Water Bodies. NEITHER DECLARANT, THE ASSOCIATION NOR ANY OF THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND OR OTHER WATER BODY WITHIN OR ABUTTING THE PROPERTY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY OR ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE

HEREBY NOTIFIED THAT FROM TIME TO TIME MANATEE, ALLIGATORS AND OTHER WILDLIFE MAY HABITATE OR ENTER INTO WATER BODIES WITHIN OR ABUTTING THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME THE PUBLIC MAY ENTER UPON AND USE THE WATERWAYS AND WATER BODIES LOCATED THROUGHOUT OR ADJACENT TO THE PROPERTY. THE LISTED PARTIES ARE UNDER NO OBLIGATION TO PROTECT AGENT OR PREVENT THE PUBLIC'S ACCESS TO AND/OR USE OF THE WATERWAYS OR WATER BODIES AND SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY THE PUBLIC'S ACCESS TO AND/OR USE OF THE WATERWAYS AND WATER BODIES.

18.19 Exhibits. Any Exhibits attached to this Declaration, any Amendments to this Declaration or any Supplemental Declaration that contain sketches of or depictions of lots, common properties, lakes, berm, improvements in any other item shown on an Exhibit if any (sketched items) shall not be binding as to the existence, size, dimension, location or identification or any other aspect of such sketched items and shall only be for informational, reference, conceptual and general schematic purposes only unless the Exhibit together with the text of this Declaration including any Amendment to this Declaration and Supplemental Declaration is specifically creating the sketched items and then only to the extent specifically created. The depiction of sketched items shown on any Exhibits (unless to specifically create the sketched item(s) as stated in the previous sentence) shall not commit that same will be created and/or constructed at all or in the manner shown and the Declarant makes no representations or warranties as to how the sketched item(s) will be created and/or constructed if at all.

18.20 DISCLOSURE RELATING TO BOAT DOCKS. ALL PERSONS AND OWNERS ARE HEREBY NOTIFIED THAT AS OF THE DATE HEREOF NEITHER THE DECLARANT NOR THE ASSOCIATION HAVE OBTAINED THE NECESSARY PERMITS FOR PIERS, BOAT DOCKS AND/OR BOAT SLIPS TO BE CONSTRUCTED OR LOCATED WITHIN ANY PORTION OF THE PROPERTY OR LANDS OR WATERWAYS LOCATED ADJACENT THERETO. THE CONSTRUCTION OF ANY PIERS, BOAT DOCKS, BOAT SLIPS OR ANY OTHER STRUCTURES RELATING THERETO, ON ANY PORTION OF THE PROPERTY OR LANDS OR WATERWAYS ADJACENT TO THE PROPERTY REQUIRES THE PRIOR WRITTEN APPROVAL OF ALL CONTROLLING GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCIES AND/OR ENTITIES, WHICH MAY INCLUDE BUT MAY NOT BE LIMITED TO THE ARMY CORPS OF ENGINEERS, THE DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE DEPARTMENT OF NATURAL RESOURCE PROTECTION, AND/OR ANY COUNTY, TOWN OR OTHER MUNICIPAL AGENCIES OR ENTITIES. NEITHER DECLARANT, THE ASSOCIATION, NOR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS (THE "LISTED PARTIES") HAVE MADE ANY REPRESENTATION THAT PIERS, BOAT DOCKS OR BOAT SLIPS ARE OR WILL BE PERMITTED TO BE CONSTRUCTED OR PLACED UPON ANY PORTION OF THE PROPERTY, LANDS OR WATERWAYS LOCATED ADJACENT TO THE PROPERTY. FURTHERMORE, THE LISTED PARTIES DO NOT IN ANY MANNER WARRANT THAT PIERS, BOAT DOCKS OR BOAT SLIPS WILL BE PERMITTED AT ANY TIME.

ARTICLE 19

OWNERSHIP

19.1 Transferees. An interest in a Lot, whether in fee, lease, or otherwise, may not be transferred other than to:

- (a) No more than two natural persons, none of whom hold an interest in more than one Lot, both of whom must be part of the same Family;
- (b) Trustees of a trust where the trust is created for a natural person's estate and/or the person's tax planning purposes, and during the trustee's ownership if the Dwelling Unit is occupied then occupancy is by a beneficiary of the trust unless the Lot has an approved tenant; or,
- (c) An Institutional Mortgagee taking title to the Lot secured by its Institutional Mortgage either pursuant to a deed in lieu of foreclosure of that mortgage, or if that mortgage is foreclosed, a certificate of title resulting from a clerk's sale in that foreclosure action.

19.2 Occupants. If other than a natural person is not prohibited from owning a Lot and is the intended Owner of a Lot, or if a natural person as the intended Owner of the Lot (collectively "Intended Owner") does not intend to reside at the Lot, then the Intended Owner shall, before acquisition of title to the Lot, designate the person (or the Family and that Family's members) whom is to be the resident of that Lot's Dwelling Unit.

- (a) Thereafter, the Intended Owner, before or after taking title, shall not have the right to designate another person as the resident of such Dwelling Unit, whether in substitution of or in addition to the person (or Family) initially designated, except with the written approval of the Association as may be regulated by the Rules. The Rules, without limitation, may prohibit substitution or addition to once every twelve months.
- (b) Residency is subject to the Declaration and the Rules.

19.3 Association Exemption. The restrictions of this Article shall not be applicable to the Association and to any entity formed or controlled by the Association.

EXHIBIT "A"

PARCEL NO. 1:

The South Half (S 1/2) of the parcel of land composed of the following 3 described parcels of land situate, lying and being In the County of Palm Beach, State of Florida, to wit;

PARCEL ONE: OF PARCEL NO. 1:

Commencing at a stake on the West shore of Lake Worth 6 chains and 76 links South of the line on which the largest coconut tree stands in the North Half (N 1/2) of Lot No. 2, of Section 10, Township 45 South, Range 43 East, referred to in Deed from M. Minnie Brelsford to J.W. Porter, J.E. Hamilton and A.W. Garnett, dated July 8, 1885; thence West to the West line of said Lot No. 2; thence South along the line of said Lot to the Southwest corner of the North Half (N 1/2) of said Lot 2; thence East to the lake shore; thence Northward along the lake shore to the point of beginning.

EXCEPTING from the above described parcel the right-of-way of the Florida East Coast Railway Company and the right-of-way of State Highway No. 5, (formerly known as State Highway No. 4)

EXCEPTING lands described as follows:

Commencing at a stake on the West shore of Lake Worth 6 chains and 76 links South of the line on which the largest coconut tree formerly stood in the North Half (N 1/2) of Lot No. 2 of Section 10, Township 45 South, Range 43 East, referred to in the Deed from M. Minnie Brelsford to J.W. Porter, J.E. Hamilton and A.W. Garnett, dated July 8, 1885, the above mentioned stake also referred to in the deed from J. VV. Porter to Willis Frederic Reinhardt, dated May 5, 1935; thence running West to surveyor's monument on the East side of State Highway No. 4; thence running South along the edge of said Slate Highway No. 4, 7 feet; thence East to a point 3 1/2 feet South of the point of beginning; thence running North 3 1/2 feet along the lake shore to the point of beginning.

PARCEL TWO: OF PARCEL NO.1:

The North 150 feet of the following property In Hypoluxo, Florida:

Beginning at a point 100 feet East of the Northwest corner of the South Half (S 1/2) of Lot 2, Section 10, Township 45 South, Range 43 East; thence running East 1057 feet, More or less, to the shore of Lake Worth, thence South along the shore of Lake Worth to the land of John W. Peny; thence West along the North line of land of said Perry, 1101 feet, more or less; thence North 362.7 feet, more or less to the point of beginning, (said description fronting on the Dixie Highway 150 feet, and extending to the waters of Lake Worth, fronting on said waters 150 feet, same being a part of the property conveyed to Lillie E. Voss by Charles W, Pierce and Ethel Pierce, his wife by Deed dated April 29, 1933 and recorded In Deed Book 489, Page 329).

EXCEPTING from the above described parcel the right-of-way of the Florida East Coast Railway Company and the right-of-way of State Highway No. 5;' (formerly known as State Highway No. 4).

PARCEL THREE: OF PARCEL NO. 1:

A parcel of submerged land of Lake Worth In Section 10, Township 45, South, Range 43 East, Town of Hypoluxo, Palm Beach, County, Florida, being more particularly described as follows: Commencing at the Southeast corner of Lot 12 according to the Plat of Hypoluxo Shores, as recorded In Plat Book 25, Page 125, In and for the Public Records of Palm Beach County, Florida; thence North 89 degrees 34 minutes 06 seconds East, along the Easterly extension of the South line of said Lot 12, a distance of 775.94 feet to a point on the bulkhead line on the West side of Lake Worth in the Town of Hypoluxo, Florida, as recorded in Plat Book 26, Page 89, in and for the Public Records of Palm Beach County, Florida, said point being on a curve concave to the West having a radius of 868.82 feet and a partial central angle of 8 degrees 41 minutes 06 seconds and a tangent bearing South 11 degrees 27 minutes 22 seconds West, said point also being the point of beginning of the parcel to be herein described; thence southerly along the arc of the previously described curve, a distance' of 131.70 feet to the end of the said curve and the beginning of a curve concave to the East, having a radius of 424.49 feet and a partial central angle of 36 degrees 35 minutes 51 seconds: .thence Southerly along the arc of the said curve a distance of 271.14 feet to a point; thence South 89 degrees 44 minutes 55 seconds West, a distance of 329 feet, more or less, to a point on the waters edge of Lake Worth; thence Northerly along the waters edge of Lake Worth, a distance of 390 feet, more or less, to a point of the first course, above described; thence North 89 degrees 34 minutes 06 seconds East, a distance of 259 Feet, more or less, to the point of beginning.

PARCEL NO. 2:

North 362.7 feet of the South Half (S 1/2) of Government Lot 2, In Section 10, Township 45 South, Range 43 East, lying East of Easterly right-of-way line of U.S. Highway No. 1, less the North 150 feet thereof, and less the parcel of land described as follows:

Beginning at the intersection point of the East right-of-way line of U.S. Highway No. 1, as now laid out and in use (100 foot right-of-way) and the South line of the North 362.7 feet of the South Half (S 1/2) of Government Lot 2, In Section 10, Township 45 South, Range 43 East, Palm Beach County, Florida; (hence South 89 degrees 35 minutes 04 seconds East, along said South line, a distance of 1300 feet, more or less, to the Westerly waters of edge of Lake Worth; thence Northwesterly along said waters edge to a point of intersection with a line parallel with and 55 feet North of said South line of the North 362.7 feet: thence North 89 degrees 35 minutes 04 seconds West, a distance of 115 feet, more or less, to a point; thence South 60 degrees 24 minutes 56 seconds. West, a distance of 94.69 feet to a point; thence North 89 degrees 35 minutes 04 seconds West, a distance of 1000.27 feet to a point lying on the said East right-of-way line of U.S. Highway No. 1; thence South 02 degrees 56 minutes 16 seconds West, along said East right-of- way line, a distance of 15.01 feet to the point of beginning.

Also describes as:

A parcel of land being In Government Lot 2, Section 10, Township 45 South, Range 43 East, said land being further described as follows:

Commence at the Northwest corner of said Section 10;

Thence North 89 degrees 00 minutes 13 seconds East, along the North line of said Section 10, 1357.50 feet to the West line of Government Lot 2 and the East right-of-way line of the Florida East Coast Railroad;

Thence South 01 degree 49 minutes 45 seconds West, along said West line of Government Lot 2, 1325.00 feet, to the Northwest corner of the South one-half (S 1/2) of said Government Lot 2; Thence North 89 degrees 24 minutes 38 seconds East, along the North line of the South one-half (S 1/2) of said Government Lot 2, 100.09 feet to the point on the East right-of-way of U.S. Highway No. 1, as shown on the State of Florida Road Department Right-of-Way Map Section No. 93010-2501, as recorded in Plat Book 3, Page 14,' of the Public Records of Palm Beach County Florida and the Point of Beginning.

Thence North 01 degree 49 minutes 45 seconds East, along said East Right-of-Way line 48.70 feet;

Thence North 89 degrees 17 minutes 25 seconds East, along a line of occupation, 1362.15 feet to a point on the Bulkhead Line, West side of Lake Worth, Hypoluxo, Florida, as recorded In Plat Book 26, Page 89, of the Public Records of Palm Beach ' County,' Florida, said point also being on the East line of a Trustee's of the Internal Improvement Fund of the State of Florida, Deed No. 24735, as recorded In Official Records Book 1640, Page 1756, Palm Beach County Public Records, also being a point of intersection with a curve concave Easterly, having a radial bearing .of South 79 degrees 03 minutes 59 seconds East;

Thence Southerly along the arc of said curve, having radius of 424.49 feet, a central angle of 27 degrees 44 minutes 38 seconds an arc distance of 205,55 feet, to a point of non-tangent Intersection with a line which constitutes the South boundary of the aforementioned lands conveyed In said Deed No. 24735;

Thence South 89 degrees 12 minutes 29 seconds West, 282.12 feet to the Intersection with the Mean High Water Line of Lake Worth, Elevation = 1.74 contour;

Thence along the said Mean High Water.1.74 contour line for the following seven (7) courses and distances:

South 01 degree 09 minutes 11 seconds West, 44.80 feet; South 02 degrees 25 minutes 53 seconds East, 26.64 feet; South 05 degrees 57 minutes 53 seconds East, 27,55 feet; South 38 degrees 56 minutes 27 seconds East, 17.29 feet; South 58 degrees 12 minutes 18 seconds East, 37.95 feet; South 73 degrees 43 minutes 39 seconds East, 36,17 feet; South 63 degrees 19 minutes 39 seconds East, 13.09 feet to a point on the Easterly extension of the Northern Boundary Line of The Yacht Club at Hypoluxo;

Thence South 89 degrees 18 minutes 44 seconds West, along the said Northern Line of Occupation and its Easterly extension, 132.61 feet;

Thence South 59 degrees 18 minutes 44 seconds West, 80.00 feet;

Thence South 89 degrees 18 minutes 44 seconds West, 994.41 feet to a point on the East Right-of-Way of said U.S. Highway No. 1;

Thence North 01 degree 49 Minutes 45 seconds East, along said East Right-of-Way line, 340.41 feet to the Point of Beginning.

Being in Town of Hypoluxo, Florida.

EXHIBIT "B"

The Common Properties are those portions of the Property which do not contain a Dwelling Unit or which are not a Lot and which are shown as Common Properties in the Site Plan, as recorded in Official Records Book 11561, at Page 812, of the Public Records of Palm Beach County, Florida.

EXHIBIT "C"

[This exhibit contains the certification documents for the Articles of Incorporation of the Las Brisas Homeowners Association of Palm Beach, Inc., which are omitted here. The certification is included in the official DOCs.]

**ARTICLES OF INCORPORATION
OF
LAS BRISAS HOMEOWNERS ASSOCIATION OF PALM BEACH, INC.**

The undersigned incorporator, desiring to form a corporation not for profit under Chapter 617, Florida Statutes, as amended, hereby adopts the following Articles of Incorporation:

**ARTICLE I
NAME**

The name of the corporation shall be LAS BRISAS HOMEOWNERS ASSOCIATION OF PALM BEACH, INC., which is hereinafter referred to as the "Association".

**ARTICLE II
OFFICE**

The principal office and mailing address of the Association shall be 7296 So. Federal Highway, Hypoluxo, Florida 33462, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.

**ARTICLE III
PURPOSES AND POWERS**

The objects and purposes of the Association are those objects and purposes as are authorized by the Declaration of Covenants and Restrictions for Las Brisas recorded (or to be recorded) in the Public Records of Palm Beach County, as hereafter amended and/or supplemented from time to time (the "Declaration"). The further objects and purposes of the Association are to preserve the values and amenities in the Property and to maintain the Common Areas thereof for the benefit of the Members of the Association.

The Association is organized not for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or individual person, firm or corporation.

The Association shall have the power to contract for the management of the Association and to delegate to the party with whom such contract has been entered into (which may be an affiliate of the Developer) the powers and duties of the Association, except those which require specific approval of the Board of Directors or Members.

The Association shall have all of the common law and statutory powers of a corporation not for profit which are not in conflict with the terms of these Articles and the Declaration above identified. The Association shall also have all of the powers necessary to implement the purposes of the Association as set forth in the Declaration and to provide for the general health and welfare of its membership.

Definitions set forth in the Declaration are incorporated herein by this reference.

ARTICLE IV MEMBERS

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided free interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1 above with the exception of the Developer (as long as the Class B Membership shall exist, and thereafter the Developer shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by Section 1 above. When more than one person holds such interest or interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they among themselves determine, but, subject only as provided in the following paragraph, in no event shall more than one (1) vote be cast with respect to any such lot.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to one (1) vote, plus two (2) votes for each vote which the sum of all Class A Members are entitled to cast at any time, thus giving the Class B Member approximately a 2/3 majority of votes in the Association. The Class B Membership shall cease upon the first to occur of the following:

- (1) the date which is ten (10) years from the date upon which this Declaration is recorded in the Public Records of the County; or
- (2) no later than three months after ninety percent (90%) of the Lots in all phases of the Project that will ultimately be operated by the Association have been conveyed to Members other than the Declarant; or
- (3) termination of the Class B Membership *by* resignation of all Declarant-appointed directors and delivery to the Secretary of the Association of a certificate in recordable form, signed by Declarant and stating that Declarant elects to terminate the Class B Membership.

Section 3. Meetings of Members. The By-Laws of the Association shall provide for an annual meeting of Members, and may make provisions for regular and special meeting of Members other than the annual meeting. A quorum for the transaction of business at any meeting of the Members shall exist if 33-1/3% of the total number of Members in good standing shall be present or represented at the meeting.

Section 4. General Matters. When reference is made herein, or in the Declaration, By-Laws, Rules and Regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific percentage of the votes of Members and not of the Members themselves.

**ARTICLE V
CORPORATE EXISTENCE**

The Association shall have perpetual existence.

**ARTICLE VI
BOARD OF DIRECTORS**

Section 1. Management by Directors. The property, business and affairs of the Association shall be managed by a Board of Directors, which shall consist of not less than three (3) persons, but may consist of as many persons as the Board of Directors shall from time to time determine. A majority of the directors in office shall constitute a quorum for the transaction of business. The By-Laws shall provide for the meetings of directors, including an annual meeting.

Section 2. Original Board of Directors. The names and addresses of the first Board of Directors of the Association, who shall hold office until the first annual meeting of Members and thereafter until qualified successors are duly elected and have taken office, shall be as follows:

JAMES ROSEWATER
7296 So. Federal Highway
Hypoluxo, Florida 33462

HARRY WEITZER
7296 So. Federal Highway
Hypoluxo, Florida 33462

STEPHEN NEWMAN
7296 So. Federal Highway
Hypoluxo, Florida 33462

Section 3. Election of Members of Board of Directors. Except as otherwise provided herein, directors shall be elected by the Members of the Association at the annual meeting of the membership *as* provided by the By-Laws of the Association, and the By-Laws may provide for the method of voting in the election and for removal from office of directors.

- a) All directors shall be members of the Association or shall be authorized representatives, officers, or employees of corporate members of the Association.
- b) Directors shall be elected for staggered terms of two years. Directors' elections and filling of vacancies shall be administered to ensure staggered two year terms. To ensure staggered terms at the first annual meeting of the membership following the effective date of this provision, the three nominees with the highest numbers of votes shall be elected to two year terms, and the two nominees with the next highest number of votes shall be elected to one year terms; however, if there are no more than five nominees or less, then the newly elected directors shall determine and designate, consistent with the staggered term scheme, which directors serve two year terms and which directors serve one year terms.

Section 4. Duration of Office. Members elected to the Board of Directors shall hold office until the next succeeding annual meeting of Members, and thereafter until qualified successors are duly elected and have taken office.

Section 5. Vacancies. If a director elected by the general membership shall, for any reason, cease to be a director, the remaining directors so elected may elect a successor to fill the vacancy for the balance of the term.

ARTICLE VII OFFICERS

Section 1. Officers Provided For. The Association shall have a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board of Directors may from time to time elect.

Section 2. Election and Appointment of Officers. The officers of the Association, in accordance with any applicable provision of the By-Laws, shall be elected by the Board of Directors for terms of one (1) year and thereafter until qualified successors are duly elected and have taken office. The By-Laws may provide for the method of voting in the election, for the removal from office of officers, for filing vacancies and for the duties of the officers. The officers may or may not be directors of the Association. If the office of the President shall become vacant for any reason, or if the President shall be unable or unavailable to act, the Vice President shall automatically succeed to the office or perform its duties and exercise its powers. If any office shall become vacant for any reason, the Board of Directors may elect or appoint an individual to fill such vacancy.

Section 3. First Officers. The names and addresses of the first officers of the Association, who shall hold office until the first annual meeting of directors and thereafter until successors are duly elected and have taken office, shall be as follows:

President:

JAMES ROSEWATER
7296 So. Federal Highway
Hypoluxo, Florida 33462

Vice-President:

HARRY WEITZER
7296 So. Federal Highway
Hypoluxo, Florida 33462

Secretary/Treasurer:

STEPHEN NEWMAN
7296 So. Federal Highway
Hypoluxo, Florida 33462

ARTICLE VIII BY-LAWS

The Board of Directors shall adopt By-Laws consistent with these Articles of Incorporation, Such By-Laws may be altered, amended or repeated in the manner set forth in the By-Laws.

ARTICLE IX AMENDMENTS AND PRIORITIES

Section 1. Amendments. Amendments to these Articles of Incorporation shall be proposed and approved by the Board of Directors and thereafter submitted to a meeting of the membership of the Association for adoption or rejection (by affirmative vote of 66- 2/3% of the Members), all in the manner provided, and in accordance with the notice provisions of, Section 617.017, Florida Statutes.

Section 2. Priorities. In case of any conflict between these Articles of Incorporation and the By-Laws, these Articles shall control; and in case of any conflict between these Articles of Incorporation and the Declaration, the Declaration shall control.

ARTICLE X INCORPORATOR

The name and address of the incorporator of this Corporation is:

JAMES ROSEWATER
7296 So. Federal Highway
Hypoluxo, Florida 33462

ARTICLE XI INDEMNIFICATION

Section 1. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a director, officer, employee or agent (each, an "Indemnity") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any such proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgement of the board of directors, the estimated expense of

litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense of settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believe to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

Section 3. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referee to in sections 1 or 2 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

Section 4. Any indemnification under sections 1 or 2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in sections 1 or 2. Such determination shall be made:

- (a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;
- (b) If such a quorum is not obtainable *or*, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;
- (c) By independent legal counsel:
 - (i) selected by the Board of Directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or
 - (ii) if a quorum of the Directors cannot be obtained for paragraph (a) and the Committee cannot be designated under paragraph (b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or
 - (iii) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.

Section 5. Evaluation of the reasonableness of expense and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by section 4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

Section 6. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section.

Expenses incurred by other employees and agents may be paid in advance upon such terms or condition that the Board of Directors deems appropriate.

Section 7. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of an director, officer, employee or agent if a judgement or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

- (a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
- (b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or
- (c) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgement in its favor or in a proceeding by or in the right of the members of the Association.

Section 8. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

Section 9. Notwithstanding the failure of a Association to provide indemnification, and despite any contrary determination of the Board or of the members in the specific case, a director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

- (a) The director, officer, employee, or agent is entitled to mandatory indemnification under section 3, in which case the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
- (b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to section 7; or
- (c) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in section 1, section 2, or section 11.7, unless (i) a court of competent jurisdiction determines, after all available appeals have been

exhausted or not pursued by the proposed indemnity, that he did not act in good faith or acted in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court further specifically determines that indemnification should be denied. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

Section 10. For purposes of this Article 11, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.

Section 11. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article XI shall be applicable to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

Section 12. The provisions of this Article XI shall not be amended.

ARTICLE XII REGISTERED AGENT

Until changed, James Rosewater shall be the registered agent of the Association and the registered office shall be at 7296 So. Federal Highway, Hypoluxo, Florida 33462.

EXHIBIT "D"

BY-LAWS OF LAS BRISAS HOMEOWNERS ASSOCIATION OF PALM BEACH, INC.

A Corporation Not for Profit
Under the Laws of the State of Florida

ARTICLE 1

DEFINITIONS

Section 1.1 "Association" shall mean and refer to LAS BRISAS HOMEOWNERS ASSOCIATION OF PALM BEACH, INC., a nonprofit corporation organized and existing under the laws of the State of Florida.

Section 1.2 "The Property" shall mean and refer to the Property as defined in the Declaration (the "Declaration") described in the Articles of Incorporation of the Association.

Section 1.3 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot.

Section 1.4 "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV of the Articles of Incorporation of the Association.

Section 1.5 All other definitions from the Declaration are incorporated herein by this reference.

ARTICLE 2

BOOKS AND PAPERS

Section 2.1 The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any Member of the Association.

ARTICLE 3

MEMBERSHIP

Section 3.1 Membership of the Association is as set forth in Article IV of the Articles of Incorporation of the Association.

Section 3.2 The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessments is imposed against each

Owner of, and becomes a lien upon, that portion of the Property against which such assessments are made as provided in the Declaration.

ARTICLE 4

BOARD OF DIRECTORS

Section 4.1 The Directors of the Association shall be elected at the annual meeting of the Members except as otherwise specified in the Articles of Incorporation. The election shall be decided by majority vote of all Members present in person or by proxy at the annual meeting.

Section 4.2 Any director (other than a director designated by the Developer) may be removed from office at any time with or without cause by the affirmative majority vote of the Association membership.

Section 4.3 The first meeting of the duly elected Board of Directors, for the purposes of organization, shall be held immediately after the annual meeting of Members, provided the majority of the members of the Board elected be present. Any action taken at such meeting shall be by a majority of the whole Board, if the majority of the members of the Board elected shall not be present at that time, or if the directors shall fail to elect officers, the meeting of the Board to elect officers shall then be held within thirty (30) days after the annual meeting of Members upon three (3) days notice in writing to each member of the Board so elected, stating the time, place and object of such meeting.

Section 4.4 Subject to the provision of Section 4.6 below, regular meetings of the Board of Directors may be held at any place or places within Palm Beach County, Florida, on such days and at such hours as the Board of Directors may, by-resolution, designate.

Section 4.5 Subject to the provisions of Section 4.6 below, special meetings of the Board of Directors may be called at any time by the President or by any two (2) members of the Board and may be held any place or places within Palm Beach County, Florida, and at any time.

Section 4.6 Except only for meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be protected by the attorney-client privilege, regular and/or special meetings of the Board of Directors shall be open to all Owners and notices of Board meetings shall be posted in a conspicuous place on the property governed by the Association at least forty eight (48) hours prior to the meeting, except in the event of an emergency. In the alternative, if notice is not conspicuously posted, notice of the Board meeting must be mailed or deliver to each Member at least seven (7) days before the meeting, except in an emergency. Notice of any meeting in which assessments against Lots are to be considered shall specifically contain a statement to that effect as well as a statement of the nature of such assessments.

Section 4.7 Directors (including affiliates of the Developer) shall have the absolute right to resign at any time and the remaining directors in office shall then fill the vacancies, provided that if all directors resign, a special meeting of members shall be called as soon as possible for the purpose of electing new directors and, the resignations of such directors shall not be effective until such election is held and new directors are elected, except that if no meeting is held or no directors are elected after two (2) attempts to call and jobs such meeting, the resignations shall become effective simultaneously

with the date and time of the scheduled second meeting, whether held or not or whether new directors are elected or not.

Section 4.8 Directors may not vote by proxy or secret ballot, provided, however, that secret ballots may be used for the election of officers.

Section 4.9 The Directors of the Association have a fiduciary duty to the Owners of Lots governed by the Association.

ARTICLE 5

OFFICERS

Section 5.1 Any officer may be removed at any time by the affirmative vote of a majority of the Board of Directors at any duly called regular or special meeting of the Board.

Section 5.2 All officers shall be elected by the affirmative vote of a majority of the Board of Directors at any duly called regular or special meeting of the Board. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Members of the Association and of the Board of Directors. He shall have the general powers and duties of supervision and management of the Association which usually pertain to this office, and shall perform all such duties as are properly required of him by the Board of Directors. The Board of Directors shall elect at least one (1) Vice President, who shall have such powers and perform such duties as usually pertain to such office or as are properly required of him by the Board of Director. In the absence or disability of the President, any Vice President shall perform the duties and exercise the powers of the President. If more than one (1) Vice President is appointed, the Board shall designate which Vice President is to perform which duties. The Secretary shall issue notices of all meetings of the membership of the Association and the directors where notices of such meetings are required by law or in these By-Laws. He shall keep the minutes of the meetings of the membership and of the Board of Directors. The Treasurer shall have the care and custody of all the monies and securities of the Association. He shall enter on the books of the Association, to be kept by him for that purpose, full and accurate accounts of all monies received by him and paid by him on account of the Association. He shall sign such instruments as require his signature and shall perform all such duties as usually pertain to his office or as are properly required of him by the Board of Directors.

Section 5.3 Vacancies in any office arising from any cause may be filled by the Board of Directors at any regular or special meeting.

Section 5.4 The officers of the Association have a fiduciary duty to the Owners of Lots governed by the Association.

ARTICLE 6

MEETINGS OF MEMBERS

Section 6.1 The regular annual meeting of the Members shall be held in the first quarter of each year at such time and place as shall be determined by the Board of Directors. The election of directors shall be held at, or in conjunction with, the annual Members' Meeting.

Section 6.2 Special meetings of the Members for any purpose may be called at any time by the President, the Vice President, the Secretary or Treasurer, or by any two (2) or more members of the Board of Directors, or upon written request of the Members who have a right to vote one-third (1/3) of all the votes of the entire membership, or who have a right to vote one-third (1/3) of the votes of the Class A membership. Business conducted at a special meeting shall be limited to the purposes set forth in the notice of meeting.

Section 6.3 Notice may be given to the Members either personally, or by sending a copy of the notice through the mail, postage thereon fully paid, to the addresses appearing on the records of the Association. Each Member shall register the Member's address with the Secretary, and notices of meetings shall be mailed to the Member at such address, provided, however, that if an Owner fails to register an address, the address for that Owner shall be deemed to be at the Owner's Lot. Notice of any Members' meeting, regular or special, shall be mailed or personally delivered not less than fourteen (14) days in advance of the meeting, except that the notice shall be mailed or personally delivered not less than thirty (30) days in advance of the meeting if: the meeting called includes the purpose of authorizing a non-emergency Special Assessment; or, for the consent for an amendment to the Articles of Incorporation, Declaration or Bylaws. A notice shall include an agenda stating the purpose or purposes for which the meeting is called.

Section 6.4 The presence in person or by proxy at the meeting of Members entitled to cast 33 1/3% of the votes of the membership shall constitute a quorum for any action governed by these By-Laws. Unless a greater percentage is expressly required, *decisions* of the members shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

Section 6.5 Members have the right to vote in person or by proxy. To be valid, a proxy must be in writing and be signed by the Member or the person designated in a voting certificate signed by the Member as the person authorized to cast the vote attributable to such Lot, and the proxy must state the date, time and place of the meeting for which it was given. A proxy is effective only for the meeting for which it was given, as the meeting may be legally adjourned and reconvened from time to time, and automatically expires ninety (90) days following the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form so provides, the proxy holder may appoint, in writing, a substitute to act in the proxy holder's place. No person other than a designee of the Developer is permitted to cast more than five (5) votes by proxy.

Section 6.6 Any Owner may tape record or videotape meetings of the Members, subject however to the rules established from time to time by the Board regarding such tapings.

Section 6.7 Except when specifically or impliedly waived by *the* chairman of a meeting (either by Members or Directors) Roberts' Rules of Order (latest edition) shall govern the conduct of Association meetings when not in conflict with the Declaration, the Articles or these By-Laws;

provided, however, that a strict or technical reading of said Roberts' Rules shall not be made so as to frustrate the will of the persons participating in said meeting.

ARTICLE 7

AMENDMENTS

Section 7.1 These By-Laws may be amended by the consent of a majority of the voting interests, either in person or by proxy at a Members' Meeting, or by the written consent of those holding a majority of the Members' voting interests.

- a) The notice to the Members of the meeting shall disclose the proposed amendment of the By-Laws is to be considered.
- b) The provisions which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law. Further, any provisions stated herein to be or which are in fact governed by the Declaration may not be amended except as provided in the Declaration.

Section 7.2 In case of any conflict between the Article of Incorporation and these By-Laws, the Articles shall control; and in case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE 8

OFFICIAL RECORDS

From the inception of the Association, the Association shall maintain each of the following, where applicable, which shall constitute the official records of the Association:

- (a) A photocopy of any plans, specifications, permits and warranties related to improvements constructed on the Common Areas or other property that the Association is obligated to maintain, repair or replace;
- (b) A photocopy of the By-Laws of the Association and all amendments thereto;
- (c) A certified copy of the Articles of Incorporation of the Association or other documents creating the Association and all amendments thereto;
- (d) A photocopy of the Declaration and all amendments thereto;
- (e) A copy of the current Rules and Regulations of the Association;
- (f) The minutes of all meetings of the Association, of the Board of Directors, and of Members, which minutes shall be retained for a period of not less than 7 years;
- (g) A current roster of all Owners, their mailing addresses and Lot identifications;

- (h) All current insurance policies of the Association or a copy of each such policy, which policies shall be retained for a period of not less than 7 years;
- (i) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has an obligation or responsibility;
- (j) Bids received by the Association for any work to be performed on behalf of the Association, which bids shall be retained for a period of not less than 1 year;
- (k) Financial and accounting records for the Association maintained in accordance with good accounting practices. All financial and accounting records shall be maintained for a period of not less than 7 years. The financial and accounting records shall include but not be limited to:
 - (i) Accurate, itemized, and detailed records for all receipts and expenditures.
 - (ii) A current account and a periodic statement of the account for each member of the Association, designating the name and current address of each Member, the due date and amount of each Assessment, the date and amount of each payment on the account, and the balance due.
 - (iii) All tax returns, financial statements and financial records of the Association; and
 - (iv) Any other records that identify, measure, record or communicate financial information.

ARTICLE 9

BOOKS AND PAPERS; FISCAL YEAR; MINUTES; BUDGETS; FINANCIAL REPORTS

Section 9.1 The official records shall be maintained within the State of Florida and must be open to inspection and available for photocopying by any Association Member or the authorized agent(s) of such Member at all reasonable times and places within ten (10) business days after receipt of a written request for access. The Association may adopt reasonable written rules regarding the frequency, time, location, notice and manner of inspection and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded Declaration, Articles, By-Laws and any rules to ensure their availability to Members and prospective Members, and may charge only its actual costs for reproducing and furnishing these documents.

Section 9.2 The fiscal year of the Association shall be the twelve month period commencing January 1 and terminating December 31 of each year.

Section 9.3 Minutes of all meetings of the Members and of the Board must be maintained in written form or in another form that can be converted into written form within a reasonable time. The

vote or abstention from voting on each matter voted upon for each director present at a Board meeting must be recorded in the minutes.

Section 9.4 The Association shall prepare an annual budget reflecting, among other things, the estimated revenues and expenses for the budgeted year and the estimated surplus or deficit of the end of the current year and necessary estimates for services for repair or replacement. The Association shall provide each Member with a copy of the annual budget or a written notice advising that a copy of the budget is available upon request at no charge to the Member. The copy must be provided to each Member in accordance with the time limits set forth in Section 9.1 above.

Section 9.5 The Association shall prepare an annual financial report within sixty (60) days following the close of each fiscal year of the Association. The financial report must consist of either, at the determination of the Board, (a) financial statements presented in conformity with generally accepted accounting principles, or (b) a financial report of actual receipts and expenditures, cash basis, showing, the amount of receipts and expenditures by classification and the beginning and ending cash balances of the Association. The Association shall provide each Member with a copy of the annual financial report or a written notice advising that a copy of the report is available upon request at no charge to the Member. The copy must be provided to the Member in accordance with the time limits set forth in Section 9.1 above.